United States Court of Appeals

for the Second Circuit

APPENDIX

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75-1016

IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

THE UNITED STATES,
Plaintiff-Appellee,

vs.

CAROL PRYCE, a/k/a JUNIOR PRICE,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

APPENDIX

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SECOND CIRCUIT

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Excerpts of Transcript of Proceedings,
October 25, 1974.



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

* *

THE UNITED STATES

-v-

CAROL PRYCE, a/k/a JUNIOR PRICE,

Defendant.

CRIMINAL DOCKET
NO. 1974-16

* *

Proceedings of trial held before the HON. JOHN T. CURTIN, United States District Judge, in Part I, United States Court House, Buffalo, New York, commencing on October 25, 1974.

APPEARANCES: JOHN T. ELFVIN, United States Attorney, by KENNETH COHEN, Assistant United States Attorney.

CHARLES CRIMI, Esq., Attorney for the defendant.

H. T. NOEL
OFFICIAL REPORTER, U.S. DISTRICT COURT

K E I T H G R I Z Z L E (102 Clifford Avenue, Rochester, New York), a witness called by and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. COHEN:

Q. Mr. Grizzle, will you tell us your full name?

A. Keith Ludlow Fitzhugh Grizzle.

Q. Directing your attention to October 1, 1973 at approximately 7:00 p.m. where were you?

A. 7:00 p.m. I was at the United States border.

Q. At what place?

A. At Lewiston Bridge.

Q. And was anyone with you?

A. Yes.

Q. Who was with you?

A. Leroy Cephas and a girl by the name of Princess.

THE COURT: Leroy Cephas and what was the girl's name?

THE WITNESS: Princess.

THE COURT: Princess?

THE WITNESS: Yes.

BY MR. COHEN:

Q. And how were they with you?

A. They were driving in a car with me.

Q. What car?

A. A blue Chevrolet.

Q. And where exactly at the bridge were you?

A. I was in the back seat of the car.

Q. And where were the other people?

A. Leroy Cephas was driving and the girl was sitting beside him.

Q. And were you asked any questions?

A. Yes, I was.

Q. And would you tell us what was asked of you?

A. The Customs officer --

MR. CRIMI: I am objecting to this.

MR. COHEN: Your Honor, we have already had testimony --

THE COURT: Excuse me, I will sustain the objection.

BY MR. COHEN:

Q. Could you tell us who the inspector was at the Peace Bridge?

A. A lady Custom officer.

Q. And did you say anything to the, - were you given, -

were you asked any questions?

THE COURT: Excuse me, Mr. Cohen. I have just ruled that at this stage of the litigation that it appears to me to be inappropriate to have conversations between the Customs people and these witnesses.

MR. COHEN: Your Honor --

THE COURT: I have ruled, Mr.Cohen, and I am not going to listen to argument now. Perhaps later this may be admissible but not now.

MR. SKRETNY: Your Honor, may we have a side bar just for a second?

THE COURT: All right, step up.

MR. SKRETNY: Thank you.

(Side bar conference held between Court and counsel as follows:

MR. COHEN: Your Honor, that is not being entered, - offered in as to the truth --

THE COURT: As to others.

MR. COHEN: But as to show he had an inspection and to show that these representations were made, not as to the truth of the actual statements themselves.

THE COURT: Just a minute, Mr. Cohen.

MR. COHEN: And when someone comes to the border I have to get the fact he was actually given the primary inspection.

THE COURT: All right. Now --

MR. CRIMI: We have already had Mrs. Gaffney's testimony.

THE COURT: We have had the testimony of Mrs. Gaffney. Are you going to offer this as hearsay, as an exception to the hearsay rule? Just a minute, please. Will you listen just a minute. You want to offer it as an exception to the hearsay rule and the argument is it is not as to the truth of the conversation but that these were acts, - this is what occurred, right?

MR. COHEN: Yes.

THE COURT: Mr. Crimi, you are an expert in this field.

MR. CRIMI: I am going to object to that because in this particular case the acts are, you know, are based on whether they are true or not because ostensibly if they were true we wouldn't be here.

THE COURT: As I understand, Mr. Cohen, before

Mr. Grizzle got to the bridge, he was some other place. Did he have contact, for example, with the defendant before?

MR. COHEN: Yes.

THE COURT: Did the defendant give him certain instructions?

MR. COHEN: Yes.

THE COURT: All right. Let us go back to that period of time and it may be appropriate if he was given certain instructions and if indeed he followed those instructions out, then that may be appropriate to listen to and you may have an exception then, but you do not have it now, so let us have it step by step first. Mr. Skretny.

MR. SKRETNY: Your Honor, first of all, basically the argument I would make under the circumstances, it is not an exception to the hearsay rule, that at this point in time we are offering it for the fact it was said and for no other reason, so it does not come to the hearsay rule, so his response to the Customs inspector should be admissible.

THE COURT: I will not listen until I hear more.

(Side bar conference concluded.)

THE COURT: Ladies and gentlemen, during the course of trials, quite often it is necessary for attorneys and the Court to talk over prospective testimony to determine whether it should or it should not be offered under the rules. You should not guess or speculate upon what goes on in your absence. You should only make up your mind in this case upon what you hear in your presence so that we will now continue with the questioning.

BY MR. COHEN:

Q. Mr. Grizzle, I would like to show you Government's Exhibit 37, 36, 9 and 8 and I must caution you not to tell us what they are or read any of the lettering on them at this time. Directing your attention to October 1, 1973 at approximately 7:00 p.m., were you aware of the existence of those documents?

A. Yes, sir.

MR. CRIMI: I object as leading.

BY MR. COHEN:

Q. Have you ever seen those documents?

THE COURT: Can you rephrase your question, Mr. Cohen?

BY MR. COHEN:

Q. Have you ever seen those documents before?

A. Yes, I have.

Q. And as of October 1, 1973 at approximately 7:00 p.m. had you seen them?

A. Yes, I did.

Q. And did you know where they were?

A. Yes, I did.

Q. And where were they on October 1, 1973 at approximately 7:00 p.m.?

A. I had them.

Q. And what did you do with them on October 1, 1973 approximately 7;00 p.m.?

A. I produced them to the Custom officer at the border.

Q And what Customs officer did you produce them to?

A. I don't remember her name but she was a lady.

Q. And did you give all of them to a lady?

A. Yes, I did.

Q. You gave all of them to a lady?

MR. CRIMI: That is what he said, he gave them all to a lady.

THE COURT: Next question, please, Mr. Cohen.

BY MR. COHEN:

Q. Directing your attention to approximately, - could you tell us where you were born, please?

A. I was born in Kingston, Jamaica.

Q. And of what country are you a citizen?

A. Jamaica.

Q. And of what country were you a citizen of as of October 1, 1973?

A. United States.

Q. And when did you come to leave Jamaica?

A. On the 14th of September, 1973.

Q. And where did you go?

A. Canada, Toronto.

Q. And where did you go in Toronto?

A. To my sister's house.

Q. And where was that?

A. 996 O'Connor Drive in Toronto.

Q. And how long did you stay with your sister?

A. Two weeks.

Q. And what was your intention in visiting Canada?

MR. CRIMI: Objection.

THE COURT: I will sustain the objection to his intention.

BY MR. COHEN:

Q. And who did you see when you arrived in Canada?

A. I saw my sister and my girlfriend, my sister's boyfriend and his sister.

Q. And who is your girlfriend?

A. Monica Pryce.

Q. And during, - when did you see Monica Pryce?

A. I saw her at the airport when I arrived in Canada.

Q. And from the time you saw her in the airport, how long did you see her in Canada as of September 14th?

A. That was until Sunday evening which would be about the 16th.

Q. Did you have any conversations with her?

A. Yes, I did.

Q. And what did you say?

MR. CRIMI: I object to that.

THE COURT: I sustain the objection. Again,

what Monica Pryce would say to this man outside of the presence of Mr. Pryce, the defendant, is of no consequence at all in this case. Mr. Cohen, we have had several discussions now about this and I think that you certainly have been instructed adequately not to ask questions which would elicit hearsay conversations under the guidelines which we have talked about. Next question, please.

BY MR. COHEN:

Q. Did you conduct, - did you investigate whether or not you qualified for obtaining an immigrant visa to the United States?

MR. CRIMI: I am going to object to that question, investigate.

THE COURT: I will strike investigate. Askhim, Mr. Cohen, did he do something, did he go somewhere and so forth.

BY MR. COHEN:

Q. Did you do anything to determine whether or not you qualified as an immigrant or as a visitor to the United

States?

A. No, I did not.

Q. Do you know whether or not you qualified as an immigrant or as a visitor?

MR. CRIMI: I object to these questions. I don't see the materiality and I object.

THE COURT: Does he know whether or not?

MR. CRIMI: And the form.

THE COURT: No. That is a matter of law and I will sustain the objection.

MR. COHEN: Your Honor --

THE COURT: At this time you were a Jamaican citizen, right?

THE WITNESS: Yes, sir.

THE COURT: All right. If you need expert testimony you can have somebody else. This man is not an expert in the immigration law.

BY MR. COHEN:

Q. Did you make an application for an immigrant visa to the United States?

A. No, I did not.

Q. Did you make a visitor's application for, - to visit, -

for a visitor's visa to the United States?

A. No.

Q. Did you ever obtain a certificate indicating that your labor was in short supply in the United States?

MR. CRIMI: Well, I am going to object to that, your Honor.

THE COURT: I will overrule the objection.

THE WITNESS: No, I did not.

BY MR. COHEN:

Q. Did you ever obtain a statement that you were in good health for the purpose of being an immigrant to the United States?

MR. CRIMI: Objection.

THE WITNESS: No, I did not.

THE COURT: Overruled.

BY MR. COHEN:

Q. Directing, - excuse me. Directing your attention to October 1, 1973 and Government Exhibits 36, 37, 8 and 10, could you tell us when you first saw those exhibits?

A. On October 1st.

Q. And how did you come to see them?

A. They were given to me.

Q. By whom?

A. Junior Pryce.

Q. And is Junior Pryce here today?

A. Yes, he is.

Q. Could you tell us where he is, please?

A. He is sitting over there.

Q. And what is he wearing?

A. He is wearing a dark blue suit, white shirt and a floral tie.

Q. And is there any pattern to his suit?

A. From here it looks like polka dot.

MR. COHEN: Your Honor, I would like the record to reflect that he identified the defendant.

THE COURT: That is up to the jury to make the determination whether he did or didn't.

BY MR. COHEN:

Q. And when did you first see Mr. Pryce on October 1, 1973?

A. When he came to my sister's house.

Q. And where was he?

A. The first time at the door.

Q. And what did he do?

A. He came inside. I asked him to come inside.
Q. And what did he do?
A. And he told me, - asked me if I was ready to leave and I told him I just needed to finish packing my bags.
Q. Did he say anything else to you?
A. First of all he asked me to use a phone which I allowed him to. He tried to come somebody but the person wasn't at the other end and he came to me and gave me these papers, told me that I should use those when I reached the border.
Q. What else did he say to you?
A. He told me that I should memorize the name on the papers.
Q. And was anyone else with him at the time?
A. Yes.
Q. Who was with him?
A. Leroy Cephas and the girl, Princess.
Q. And did he say anything else to you?

MR. CRIMI: Your Honor, I am going to object. There is no foundation as to who these individuals are, Cephas and Princess. I think he has come to that knowledge by hearsay and I would think somebody told him.

THE COURT: You made a judgment that was her

name. I will let it stand and you can bring it out on cross examination. Overruled.

BY MR. COHEN:

Q. And what further did Mr. Pryce say?

A. He told me that I would be asked by the Custom officer of which country was I a citizen and I should say "United States". I would also be asked where I was born and I should say "Florida", and that I was now living in Rochester.

Q. Did you ever see Mr. Pryce before?

A. Yes, I did.

Q. And where have you seen him before?

A. In Jamaica.

Q. And how long, - did you know him?

A. Not to speak to personally as a friend but I knew him.

Q. And did he say anything else while you were at 996 O'Connor Drive.

A. Just that I should keep memorizing those names and at the same time he was quizzing me if I was memorizing them properly.

Q. What was he saying to quiz you?

A. He would suddenly ask me my name which I would be using.

Q. And did he say anything else?

A. My luggages, he told me that I couldn't carry those across the border with me, neither my passport or my plane tickets, so he would take those.

Q. And what did you do?

A. I gave them to him.

Q. I see, and did there, - did you hear any other conversation between Mr. Pryce and anyone else present at that time?

A. Yes.

Q. And who else was present?

A. Leroy Cephas and Princess.

Q. And to whom was the conversation directed at?

A. Well, in this case the questions were directed to all of us.

Q. What questions?

A. To memorize names.

MR. CRIMI: I object.

THE COURT: Did Mr. Pryce ask some questions or did he give any other instructions?

THE WITNESS: Yes, he gave the same instructions.

THE COURT: What did he say?

THE WITNESS: He told them to use --

THE COURT: Who did he tell?

THE WITNESS: Leroy Cephas.

THE COURT: Individually or at the same time?

THE WITNESS: Individually and at the same time.

THE COURT: You tell us to the best of your recollection what he said to these other two individuals and what they said to him.

THE WITNESS: Okay. He gave each of us a driver's license and I am certain I got two more identifications. I am not certain about the rest and we were all asked, - told to memorize the names on the cards and we were to say we were United States citizens, we were born in Florida and we were all living in Rochester.

BY MR. COHEN:

Q. And did you see the identification he gave to the individual named as, - that you have named as Leroy Cephas?

A. Yes, I did.

Q. Would you tell us what that was, please?

A. It was a driver's license.

Q. Did you see any other identification which he gave to the individual known as Leroy Cephas?

A. I don't remember.

Q. Let me show you Government Exhibit Number 6. Would you tell us what Government's Exhibit Number 6 is, please? Have you ever seen that before?

A. Yes, I have.

Q. And when did you see that?

A. On October 1st.

Q. And how did you see it?

A. I saw Junior Pryce giving it to Leroy Cephas.

Q. And what did Mr. Pryce say?

A. Told him that this was the name he should use when he reached the border.

Q. And what is that name?

A. Stephen Madison.

Q. Now, directing your attention back to Government's Exhibits 36 and 37, how did you first come to see those exhibits?

A. They were given to me.

Q. And by whom?

A. Junior Pryce.

Q. And what about Government's Exhibits Number 8 and Number 9?

A. These were also given to me by Junior Pryce.

Q. And what are they?

A. One is a Xerox --

Q. By number, which number is the Xerox?

A. Exhibit 8, Xerox ID card.

Q. In what name?

A. Manny McCutcheon.

MR. CRIMI: It is not in evidence yet, your Honor, I object.

THE COURT: All right. I will sustain the objection.

BY MR. COHEN:

Q. Were you given any instructions with respect to the specific exhibits?

A. Yes. I was told that if I was asked for any more identification, I should produce these identifications.

Q. And that is Government Exhibit 8 and Government Exhibit 9?

A. Yes.

Q. And with respect to Government's Exhibits 36 and 37, were you given any specific instructions with respect to them?

A. Yes. This is a driver's license and I was told to produce this for identification first.

Q. And what name were you told to give to the Customs inspectors?

A. Manny McCutcheon.

Q. And is that your name?

A. No.

Q. And is that, - what name is that driver's license in?

THE COURT: Listen, Mr. Cohen, maybe it is technical, but they are not in evidence yet and I said Mr. Crimi is going to have opportunity to cross examine before they are in evidence. You will have a chance to get this. Let us take one thing at a time.

BY MR. COHEN:

Q. Did there come a time when you left 996 O'Connor Avenue?

A. Yes, I did.

Q. And how did you come to leave it?

A. I left with Junior Pryce and the other parties.

Q. What other parties?

A. Leroy Cephas and Princess.

Q. And in what way did you leave?

A. I left by car.

Q. What car?

A. A blue Chevrolet.

Q. And where did you drive, - and who was sitting where in the car?

A. Junior Pryce was driving. Princess was sitting up in

front with him and Cephas was sitting beside me in the back.

Q. And where did you drive?

A. We drove to a subway station.

Q. Where?

A. In Toronto.

Q. Was there any conversation in the car on the way to the subway station?

A. Yes.

Q. And did Junior Pryce say anything?

A. Yes, he did.

Q. And what did he say?

A. He kept quzzing us on the names we were supposed to use.

Q. Did he question you all at the same time or individually?

A. Individually.

Q. What did he say to you?

A. He asked me what's my name.

Q. And what did you say?

A. Manny McCutcheon.

Q. Did he say anything else to you?

A. Yes, where I was living.

Q. And what did you say?

A. 10 Filander Street.

Q. Did he say anything else to you?

A. Yes, where I was born.

Q. And what did you say?
A. United States.
Q. And did you hear him say anything to the other individuals in the automobile?
A. Yes, I did.
Q. With respect to the individual known as Leroy Cephas, what did he say to Leroy Cephas?
A. He kept asking him his name.
Q. And what did Mr. Cephas say?
A. Stephen Madison.
Q. Did he ask anything else of Mr. Cephas?
A. Yes, where he was now living, where he was born.
Q. And what did Mr. Cephas say?
A. He was born in Florida. He was now living in Rochester.
Q. Did he ask any questions of the third individual in the car?
A. Yes.
Q. And what did he ask?
A. Her name.
Q. And what did she, - what did he say?
A. He asked her what's her name.
Q. And what did she say?
A. Barbara James.
Q. And did he ask her any other names?
A. Where she was born.

Q. What did she say?

A. Florida.

Q. Did he ask her any other questions?

A. Yes, where she was now living, but I don't remember what she told him.

Q. Now, you say, - did any other conversation occur between Mr. Pryce and other individuals in the car on the way to the subway station?

A. No.

Q. Now, directing your attention back to 996 O'Connor Drive you indicated that you give Mr. Pryce your suitcases?

A. Yes, I did.

Q. And you indicated that you gave him your passport?

A. Yes, I did.

Q. Did you see what Mr. Pryce did with your passport?

A. No, I did not.

Q. Did you see, - well, did you put it in his hand?

A. Yes, I did.

MR. CRIMI: Your Honor, I object to this series of leading questions.

THE COURT: Yes. Do not ask leading questions, Mr. Cohen. Just "What did you do", period, and let the witness explain to you. He can explain in his own words.

BY MR. COHEN:

Q. How did your passport come to leave your possession?

A. I gave it to Junior Pryce.

Q. And did you see what he immediately did with it?

MR. CRIMI: I object to that.

THE COURT: Sustain that. You do not have to put in "immediately".

BY MR. COHEN:

Q. Did you see the --

THE COURT: That is up to the witness to tell us whether it was immediate or sometime later.

BY MR. COHEN:

Q. What actions of Mr. Pryce did you observe with your passport?

A. He had it in his hands.

Q. If any?

A. He had it in his hands.

Q. And did you see anything, - did you see him do anything with it?

A. No, I didn't see what he did with it.

Q. With respect to your luggage, did you observe Mr. Pryce and your luggage?

A. Yes, I did.

Q. What did you observe?

A. He put it in the trunk of the car.

Q. All right. Directing your attention back to the subway station, would you tell us what happened when you arrived there?

A. When we arrived at the subway station, Junior Pryce got out and Leroy Cephas, they both went to the back of the car and took the luggages out and took it down to the subway station.

Q. Now, were you able to see them take the luggage out of the back of the car?

A. No, I did not.

Q. Well, where were you?

A. I was sitting in the back of the car.

Q. And where were they?

A. They were behind the car.

Q. And could you see, observe what they were doing in the trunk of the car?

A. No, I didn't.

Q. Why couldn't you observe what they were doing in the trunk of the car?

A. I wasn't looking.

Q. Well, did any conversation occur at the subway station?
A. Not with me.
Q. Did you hear Junior Pryce say anything?
A. I couldn't tell you what he said but I know he was, - I heard him speaking to Cephas.
Q. Did any conversation occur when you gave Junior Pryce your passport and your luggage?
A. Yes.
Q. And what conversation was that?
A. He told me I shouldn't have those with me when I was going across the border.
Q. Was anything else said?
A. No.
Q. Did you observe, - what else did you observe when you arrived at the subway station?
A. I saw Junior Pryce and Leroy Cephas taking the luggages down into the subway station.
Q. And which luggage?
A. My luggages and other luggages that belongs to Princess.
Q. Did you have a conversation with Mr. Pryce regarding that action?
A. Before at the house he told me he would be taking them across with him.
Q. What did he say?
A. Well, he told me I shouldn't have those with me when I

was crossing the border so he would be taking them.

Q. Taking them where?

A. America.

Q. Did he say anything else? What were his words?

A. I can't tell you the exact words he use. I don't remember.

Q. Now, what happened after you saw Mr. Pryce disappear in the subway?

A. Well, Leroy Cephas alone came back.

Q. And then what happened?

A. He took the driver's seat in the car and drove us towards the border.

Q. And at about what time did you reach the border?

A. About 7:00 o'clock.

Q. Excuse me, your Honor. When you arrived at the border, could you tell us what you did with Government Exhibits 36, 37, 8 and 9?

A. I was asked to produce some identification and I gave the Custom officer the driver's license.

MR. CRIMI: I object to these now again, your Honor.

THE COURT: Do you want to ask some preliminary questions on cross examination, Mr. Crimi?

MR. CRIMI: No, I don't, your Honor.

THE COURT: I will overrule the objection. I mean we cannot have it both ways. I told you that I would permit cross examination before they were admitted in evidence if you desire to have any. We have to come to a time when we are going to talk about these documents.

MR. CRIMI: I understand that, your Honor, but at this particular point I think it has been sufficiently established that the defendant was not there and all of these acts and conversations are outside of his presence.

THE COURT: That is right.

MR. CRIMI: And I do not think that either the conversations or the physical handling of this material are yet within any exception of the hearsay rule.

THE COURT: I will overrule your objection.

MR. CRIMI: Exception.

THE COURT: Go ahead, Mr. Cohen.

BY MR. COHEN:

Q. And what did you do with those, with Government's Exhibits 36, 37, 8 and 9?

A. The Custom officer first asked me for an identification and I gave her the driver's license.

Q. And that is Government's Exhibits 36 and 37?

A. That's right.

Q. And what did you say to the Customs officer?

A. She ask me --

Q. No. What did you say to the Customs officer?

A. Nothing. I just gave her the driver's license.

Q. Did she ask you any questions?

A. Yes, she did.

Q. And what did you say in response to those questions?

A. She asked me of which country was I citizen and I told her the United States.

Q. And did she ask you anything else?

A. Yes. She asked me where I was born and I told her in Florida and she also asked me where I was now living and I told her in Rochester.

Q. And you indicated you gave her the driver's license?

A. Yes.

Q. And what did she do with the driver's license?

A. She looked at them. She asked me if I have any more identifications and so I gave her Exhibit 8, which is the Xerox ID card, and Exhibit 9, which is a blood donor card.

MR. CRIMI: I object to those.

THE COURT: Overruled.

BY MR. COHEN:

Q. And could you tell us the name on the driver's license?

A. It is Manny McCutcheon.

Q. And the name on the Xerox identification card?

A. Manny McCutcheon.

Q. And the name on the blood donor's card?

MR. CRIMI: Objection, your Honor. They are not in evidence.

THE COURT: Mr. Crimi, I asked if you wanted to cross examine and you said "No". If they are not technically moved in evidence and if you want to ask any questions on cross examination now?

MR. CRIMI: No.

THE COURT: All right. Mark the exhibits in evidence, please. Why don't we do that, Mr. Cohen, the exhibits Mr. Grizzle is talking about.

MR. COHEN: Yes, your Honor.

(Government Exhibits Numbered 8, 9,

36, 37, received in evidence.)

BY MR. COHEN:

Q. Directing your attention to Government Exhibit 6, on or about October 1, 1973 at approximately 7:00 p.m. did you see that exhibit?

A. Yes, I did.

Q. And would you tell us the circumstances of your seeing it?

A. Well, before 7:00 o'clock I saw Junior Pryce giving it to Leroy Cephas.

Q. And at approximately 7:00 o'clock --

A. I saw Leroy Cephas produce it to the Custom officer.

Q. Did you hear any conversation between the Customs officer and Leroy Cephas?

A. Yes, I did.

Q. And could you tell what was asked Mr. Cephas?

A. He was asked for an ID and he produced the driver's license.

MR. CRIMI: I am objecting to this conversation between Cephas and the immigration officer, your Honor.

THE COURT: Overruled.

MR. CRIMI: Exception.

BY MR. COHEN:

Q. Did you observe any conversation between the Customs officer and the third individual in the automobile?

A. Yes, I did.

Q. And what was that?

A. She also asked Princess for an identification.

MR. CRIMI: Again, your Honor, I am going to object and I would like to have a side bar on this.

THE COURT: All right. Step over, please.

(Side bar conference held between Court and counsel as follows:

MR. CRIMI: My objection is based upon the fact that I don't see at this particular time there has been any conspiracy shown and in which would be a basis between someone else and co-conspirators, and the defendant not being present, they are still hearsay.

MR. COHEN: Your Honor --

THE COURT: I will permit it under the ruling I made before. I think, Mr. Crimi, in a

situation where we have the testimony from Mr. Grizzle about his conversations with Mr. Cephas, that they gave him certain instructions, and now I think that when he appeared at the bridge and then he then repeats what the instructions are, it seems to me that even though the defendant is not present, that here we are concerned with the act of making the statement and therefore whether it is Princiess or whether it is Cephas or Grizzle, I am going to permit that testimony.

MR. CRIMI: Exception, your Honor.

(Side bar conference concluded.)

MR. SKRETNY: Excuse me, your Honor. May we have just one moment. Thank you.

MR. COHEN: Could you, - I would like to move the admission into evidence at this time, your Honor, of Government Exhibit Number 6 for identification.

THE COURT: All right.

MR.CRIMI: I have my objection at all times,

your Honor.

THE COURT: All right. I will overrule the objection and mark the exhibit in evidence.

(Government Exhibit Number 6 received in evidence.)

BY MR. COHEN:

Q. As a result of the events of October 1, 1973, were you granted a visa to enter the United States of America?

A. No, I was not.

Q. Have you ever paid any money to anyone for entering the United States?

A. No, I did not.

Q. What happened to you as a result of these events?

A. I was arrested.

Q. And what happened after you were arrested?

A. I was taken to jail.

Q. And how long were you in jail?

A. About twelve days.

Q. And what were the conditions of your bail?

A. I was granted, - would be granted bail on $2,500.

Q. Was there any other condition?

A. Yes, that if somebody would bail me I had to produce my passport before I would be released.

Q. Excuse me, if somebody would, - I don't understand your anser to that question. What was the other condition of bail?

A. That I produce my passport before I will be allowed out of jail.

Q. Had you produced your passport?

A. Yes.

Q. What steps did you take to produce your passport?

A. Well, I believe my girlfriend --

Q. Please don't tell the jury what your girlfriend did. Please tell us what you did.

A. Well, I couldn't do anything about it at the time but my lawyer --

Q. You spoke to your lawyer?

A. That's right, inquired about it for me.

Q. Okay. Did you ever give anybody any money?

A. When?

Q. With respect to your passport?

A. Yes.

MR. CRIMI: I object to this. It is not material, is it, to this?

MR. COHEN: Your Honor, we offer it --

THE COURT: Wait a minute, Mr. Cohen. I think we better step to the side.

(Side bar conference held between the Court and counsel as follows:

MR. COHEN: Your Honor, I am offering this in evidence subject to being connected up by further testimony from Monica Pryce. His testimony would be he paid Monica $50. Monica's testimony would be she let the word out she would pay for the return of the passport; that Junior called her at 6:00 that morning and told her she could have it for ninety-five; that she told him that Keith would be good for themoney and when Keith got out of jail she got the money from Keith and gave it to Junior, paid $50 to Junior, and the purpose --

MR. CRIMI: I am objecting to it. I don't think it is relevant or material and it is prejudicial.

MR. COHEN: Your Honor, it is a continuing conspiracy.

THE COURT: Excuse me. The conspiracy would end, of course, upon, - it would end upon the arrest of Mr. Grizzle. The other thing

is this, there seems to be two problems. One is, obviously in a case like this Monica Pryce is not an FBI agent and we don't know what she is going to say when she gets on the stand, so as far as connecting it up, we can't absolutely one hundred per cent guarantee it will be connected up, and secondly, it seems that this happened after the event. There is some evidence as to indicate criminal conduct which you can show by past happenings, if it is to indicate what the man's intent was at the time of the actual occurrence. This may be, as far as relevancy, it may be relevant to show that, but on the other hand, it appears that we now have the jury considering another and separate criminal offense.

MR. COHEN: Your Honor --

THE COURT: Of course, unless it is inextricably connected with the happening of this event and you also need it in order to prove this event, it seems to me that there is great danger in letting it in.

MR. COHEN: Our feeling is when we learned of

this information in interviewing our witnesses last night that it seemed to be directly related to the purpose of the conspiracy as far as Mr. Pryce is concerned, and that was to obtain money by bringing these people into the United States. I think the cases are legend. I can quote you a Ninth Circuit case.

THE COURT: Okay, Mr. Cohen.

MR. COHEN: And we think --

THE COURT: I am not going to listen to his testimony about it now. If it is important enough and you can connect it up and you can convince me that it is not a separate crime, then perhaps we would consider it, but I am not going to let Mr. Grizzle testify to it now, so I will sustain the objection.

(Side bar conference concluded.)

THE COURT: Again, ladies and gentlemen, please do not guess at what we talked about at the side bar.

BY MR. COHEN:

Q. Mr. Grizzle, have you ever been convicted of a crime?

A. Yes.

Q. And what crime is that?

A. A misdemeanor for conspiracy to enter the United States illegally.

Q. Were you ever promised anything for your testimony here today?

A. Yes, I was.

Q. And what were you promised?

A. I was promised that misdemeanor of conspiracy to attempted illegal entry into the United States.

Q. And what did you have to do here today?

A. Come and speak the truth.

Q. Have you ever received any money about testifying to these events?

A. No.

Q. Do you expect to receive some money for testifying about these events?

A. Yes.

Q. And what do you expect to receive?

A. A witness fee.

Q. And how is it that you are in the United States right now?

A. Right now I am paroled into the United States to testify

at this trial.

Q. And who paroled you into the United States?

A. The Immigration.

Q. Have you ever been asked the questions which I asked you today before?

A. Yes.

Q. And when was that?

A. Last night.

Q. And at any other time?

A. Yes, on about the third of May.

Q. And were you ever told what to say?

A. No.

MR. COHEN: Thank you very much.

THE COURT: Ladies and gentlemen, we will hear cross examination, but before that I want to say this right now, and that is the fact that Mr. Grizzle pled guilty to a criminal charge, this misdemeanor, has absolutely no bearing at all on the guilt or innocence of Mr. Pryce. You cannot consider the fact that this man, Mr. Grizzle, admitted guilt as any evidence whatever about any criminal conduct on the part of the defendant in

this case.

Mr. Crimi.

MR. CRIMI: Your Honor, I would like to start my cross examination but I may have to suspend because I need the material.

THE COURT: Why don't we do this. Do you want to start first, Mr. Crimi, or do you want to suspend?

MR. CRIMI: I don't know what time your Honor adjourns for lunch.

THE COURT: I was going to keep going until about 1:00 o'clock. Do you want to suspend for a few minutes?

MR. CRIMI: Well, really more than a few minutes.

THE COURT: Well, let us put it the other way around. Can you start your cross examination?

MR. CRIMI: Yes.

THE COURT: All right. Let us do that. You let me know when you think is a good time to suspend.

CROSS EXAMINATION BY MR. CRIMI:

Q. All right, your Honor. Now, Mr. Frizzle, you said that you were --

Q. While you were in jail?

A. Yes.

Q. And besides this, - what was your sentence on this particular conspiracy?

MR. COHEN: I object, your Honor.

THE COURT: Overruled.

THE WITNESS: My sentence on the misdemeanor?

BY MR. CRIMI:

Q. Yes.

A. I was, - I would receive six months in jail or a $500, or both.

THE COURT: Excuse me, so I understand. That is the possible sentence you could have received, is that right?

THE WITNESS: That's right.

THE COURT: All right.

BY MR. CRIMI:

Q. What did you receive?

A. I received one year probation.

Q. So you never went back to jail, is that correct?

A. After I left jail on bail, I didn't go back.

THE COURT: Excuse me, Mr. Crimi. The witness' name is Grizzle.

BY MR. CRIMI:

Q. Grizzle, I beg your pardon. Mr. Grizzle, you said you had been convicted of a crime of conspiracy, a misdemeanor, is that correct?

A. That's correct.

Q. And did that arise out of the incidences that you have been testifying to here today?

A. Yes.

Q. And were you originally charged with a misdemeanor?

A. No.

Q. What were you charged with originally?

A. I was charged for attempting illegal entry into the United States.

Q. That is a felony, is it not?

A. I think so.

Q. And so you made a deal, did you not?

A. That's correct.

Q. And you made a deal in exchange for your testimony here, isn't that correct?

A. That's correct.

Q. And when did you make that deal?

A. While I was in jail.

Q. All right. Who did you talk to in Immigration to work out this arrangement?

MR. COHEN: I object, your Honor.

THE WITNESS: I didn't talk to anybody in Immigration about it.

THE COURT: Overruled.

BY MR. CRIMI:

Q. Who did you talk to?

A. I spoke to my attorney.

Q. And your attorney spoke to somebody to get this deal for you, is that correct?

A. I suppose so.

Q. Well, he must have conferred with you, somewhat, didn't he, your attorney?

MR. COHEN: Your Honor, I object.

THE COURT: Mr. Cohen, please, so you understand what we are doing and so we don't have the questioning interrupted, it is certainly most important that the jury understand all the reasons in Mr. Grizzle's mind about why he is testifying and therefore Mr.Crimi is entitled to bring out just as

fully and as completely as he wants to any conversations which Mr. Grizzle had with his lawyer, with the Immigration Service, with your office, with the Probation Office or with anyone else, the Court, which in any way might have influenced, might influence his testimony here.

MR. COHEN: Your Honor, it was my understanding the purport of the question that Mr. Crimi was asking Mr. Grizzle about his attorney's conversations --

THE COURT: He, of course, would have a conversation with his lawyer, I suppose. Maybe Mr. Grizzle knows who his lawyer talked to and maybe he does not. Mr. Crimi is entitled to ask about all those things.

BY MR. CRIMI:

Q. I believe I asked you whether or not you conferred with your lawyer about this deal?

A. Yes.

Q. You did?

A. Yes.

Q. And did he tell you with whom he was negotiating?

A. I don't remember.
Q. You don't recall?
A. No.
Q. How long ago was this negotiation?
A. That was in October last year.
Q. October of last year?
A. Yes.
Q. At or about the time that this thing happened, is that correct?
A. Between October 1st and October 12th.
Q. Oh. In other words, this agreement was made between October 1st and October 12th of 1973, is that correct?
A. That's correct.
Q. Now, while you were in jail, did anybody from Immigration come to talk to you?
A. No.
Q. And what did you have to promise to do in exchange for this dropping down to a misdemeanor?
A. I was told, - I was asked to speak truth of the events which took place on October 1st.
Q. All right. Now, have you, - you said you would do that, is that correct?
A. That's correct.
Q. You knew that if you didn't do your part of the bargain that you could not get this reduction in the charge, is

that correct?

A. That's correct.

Q. And so you agreed to go through with it, is that right?

A. That's right.

Q. Now, I think you said that you went over the questions last night, is that correct?

A. That's correct.

Q. And you went over these questions with whom?

A. Mr. Cohen.

Q. And was he reading from that paper that he was reading today, the questions?

A. That's correct.

Q. And he was asking you the question?

A. That's right.

Q. And then you gave the answer?

A. That's right.

Q. And then he asked you the next question?

A. That's right.

Q. And you gave the answer?

A. That's right.

Q. Did he have all these things written down?

A. Yes, he did.

Q. And did you answer everyone of those questions perfectly?

A. I wouldn't say perfectly.

MR. COHEN: I object, your Honor. That is asking for a conclusion.

THE COURT: It is cross examination. I would sustain it on direct but on cross examination, more leeway is given to the questioner.

THE WITNESS: I wouldn't say perfectly.

BY MR. CRIMI:

Q. There were times you made mistakes?

A. I don't know if I made mistakes. He didn't tell me if I made mistakes but I answered to the best of my recollection.

Q. Well, how do you know your answers were the same as he anticipated, or did you?

A. I didn't.

Q. You didn't, but how many times did you go over these questions and answers?

A. Once or twice before last night.

Q. When were those times?

A. About the last time, - before the last time was on or about the 30th of May.

Q. 30th of May?

A. Yes.

Q. And did you go through the same routine of he asking you questions?

A. That's right.

Q. And he is reading the questions from the paper, is that right?

A. That's right.

Q. And besides the 30th of May, when did you ever do that with him before?

A. No, I don't think so.

Q. Were you, - incidentally, I think, your Honor, I am going to ask for those as part of the material under 3500 at the proper time. Now, Mr. Frizzle, - I am sorry, Mr. Grizzle, - no. You, when did you get to Canada?

A. On the 14th of September, 1973.

Q. And how did you get into Canada?

A. By airplane.

Q. And did you get into Canada as, -under some permit or something?

A. Yes, a visitor's permit.

Q. A visitor's permit?

A. Yes.

Q. And what was this visitor permit; how long was it good for?

A. Three weeks.

Q. Three weeks?

A. Yes.

Q. So that, - and what was the date again, September 14th?
A. That's right.
Q. So that on or about October 1st you had used up --
A. Two weeks.
Q. A couple of weeks, is that correct?
A. That's correct.
Q. And on or about October 1st you knew, did you not, that it would be wrong for you to try to enter the United States, isn't that correct?
A. No.
Q. You didn't know that?
A. No.
Q. All right. You wanted to get to the United States?
A. That's right.
Q. Well, why did you want to get to the United States?
A. For a few reasons. Mostly to better myself and provide a better future for my daughter, myself, and mainly the person of myself, my health. I am an asthmatic.
Q. Well, didn't Monica Pryce have something to do with your desire to come to the United States?
A. That's right.
Q. And as a matter of fact, Monica Pryce is your girlfriend, isn't that right?
A. That's right.
Q. And she is a little bit more than your girlfriend; she is

really your common law wife, isn't that right?

A. That's right.

Q. And you knew Monica Pryce in Jamaica, did you not?

A. Yes, I did.

Q. And you had a child by Monica Pryce in Jamaica?

A. That's right.

Q. And that is the same child you worried about, isn't that right?

A. That's right.

Q. And Monica Pryce was in the United States, isn't that right?

A. Yes.

Q. And Monica Pryce wanted you to be next to her at her side, isn't that correct?

A. That's right.

Q. She missed you, didn't she?

A. She would.

Q. She would?

A. That's right.

Q. And did you have any correspondence with Monica Pryce prior to October 1, 1973?

A. Yes, I did.

Q. And she told you she missed you, isn't that right?

A. Yes, she did.

Q. And that she loved you?

A. That's right.
Q. Now, who had the child?
A. Monica's mother.
Q. Where does Monica's mother live?
A. She lives in Jamaica.
Q. In Jamaica?
A. Yes.
Q. Okay. So that you really wanted to come to the United States for all of those reasons and in particular to be next to Monica Pryce?
A. That's right.
Q. You are still living with Monica Pryce, are you not?
A. Yes, I am.
Q. So when you got to the bridge and you were asked questions, you lied to the lady inspector, did you not?
A. That's right.
Q. And you knew it was a lie, didn't you?
A. That's right.
Q. But you did it because you wanted something, isn't that correct?
A. That's correct.
Q. And you wanted to get to the United States, isn't that correct?
A. That's right.
Q. And then when you talked to the other inspector, you lied

to him?

A. That's right.

Q. And when they asked you who you were, that was a lie, wasn't it?

A. That's right.

Q. And when they asked you where you born, that was a lie, wasn't it?

A. That's right.

Q. And when they asked you, - let's see, where you were born, - let me see what the other question was they asked you, - and when they asked you whether you were a citizen, that was a lie, wasn't it?

A. That's right.

Q. And you knew it?

A. Yes, I did.

Q. And you were willing to do it because there was something you wanted, isn't that right?

A. That's right.

Q. Okay. Now, do you lie when you want something?

MR. COHEN: I object, your Honor.

THE WITNESS: No.

BY MR. CRIMI:

Q. No. This is the only time in your life you ever lied was

at the bridge?

A. No.

Q. You have lied on other occasions, have you?

A. Yes, I did.

Q. How many times?

A. I can't count them.

Q. Well, more than once?

A. That's right.

Q. Maybe ten times?

A. That's right.

Q. Maybe more?

A. Maybe more.

Q. Now, you knew too everytime you handed over those documents that they didn't respond to you, right?

A. That's right.

Q. So not only were you doing something that was wrong and a lie by giving the documents, but you were also speaking untruths too, isn't that correct?

A. That is telling a lie, untruth and a lie, the same thing.

Q. Now, I think you said there was a girl by the name of Princess, is that correct?

A. That's correct.

Q. Had you ever seen her before that day?

A. Yes, I had.

Q. Had you ever seen the other fellow, - was it Cephas?
A. Yes.
Q. Had you seen him before that day?
A. No.
Q. It was the first time you ever saw him?
A. Yes.
Q. How do you know it was Cephas?
A. I didn't know his name was Cephas then.
Q. Oh, I see. Well, who told you it was Cephas? You had been saying it was Leroy Cephas here. Did the District Attorney tell you it was Leroy Cephas?
A. After I was in jail after I was arrested I found out his name was Cephas.
Q. Up to that time what did you think his name was?
A. I didn't know because they didn't mention it.
Q. In other words, when you got in jail and when you were making this arrangement whereby you got a misdemeanor, in those conversations you were told that this other fellow was Cephas?
A. That's right.
Q. But if you were to recount exactly what happened on October 1, 1973, at that time you didn't know his name was Leroy Cephas?
A. No.
Q. You didn't know where he came from, did you?

A. By his language I know he was a Jamaican.

Q. Preceding that, where had he been? Did you know that he had come from Rochester?

A. No.

Q. You didn't know that?

A. No.

Q. Is that the only crime you have been convicted of is this misdemeanor you are talking about?

A. Yes.

Q. Any other arrests or crimes?

A. No.

Q. Okay, and you are presently living in Rochester. Are you working in Rochester?

A. Yes, I am.

Q. Now, you say that you have been paroled, is that correct?

A. That's correct.

Q. And this was also something that was thrown in by the Government for your testimony, isn't that correct?

A. No.

Q. No. Well, what, - who paroled you?

A. The Immigration did.

Q. And that's because they wanted you to testify, isn't that correct?

A. Well, at first I was paroled to finish my case and then I was extended to finish this case.

Q. I mean if you told them you didn't want to testify, they would revoke the parole, wouldn't they?

A. I guess so.

MR. COHEN: I object, your Honor. He doesn't know the answer to that.

THE COURT: He answered it all right. Overruled.

BY MR. CRIMI:

Q. Now, this questioning last night, how long did that questioning take, can you tell me?

A. About an hour or hour and a half.

Q. An hour, hour and a half?

A. Yes.

Q. And I think you said you went over it once or twice?

A. No.

Q. No, just once?

A. I said once.

Q. Once, and then there was another questioning in May, is that correct, of this year, another time that you went over this material?

A. Yes.

Q. In May of this year?

A. Yes.

Q. And didn't you go over this material once before in

testifying before you went in to testify before a grand jury?

A. No.

Q. You went in there absolutely cold?

A. That's right.

Q. Nobody asked you any questions, is that right?

A. That's right.

Q. And was your attorney present at any of these conferences concerning your testimony and what it was going to be?

A. On May 30th he was with me in the U. S. Attorney's office.

Q. Okay. Let me see these. Now, what address were you living at in Toronto?

A. 996 O'Connor Drive.

Q. Pardon?

A. 996 O'Connor Drive.

Q. 996 O'Connor Drive?

A. Yes.

Q. And when you say Mr. Pryce came to that address, was this other fellow with him at that time?

A. Yes.

Q. And they both came in the same car?

A. I would guess so.

Q. And you said before you don't know where this Mr. Cephas came from, is that correct?

A. That's correct.

Q. Do you know whether Mr. Cephas knows your girlfriend Monica Pryce?

A. I know now.

Q. You know now?

A. Yes.

Q. That she saw him?

A. Yes.

Q. And she saw him in the United States before October 1st, do you know that now?

A. Yes.

MR. CRIMI: Now, your Honor, I would like to suspend at this time.

THE COURT: Fine, that is reasonable, Mr. Crimi. Ladies and gentlemen, we will be in recess. We will be in recess until 2:30. It is important that Mr. Crimi have an opportunity to look at certain documents which were just delivered to him this morning and secondly, I have scheduled to have some meetings with some attorneys from out of town at quarter to 2:00, 2:00 o'clock, and I think it probably will take until 2:30,

so we will be in recess until 2:30. In the meantime, please do not discuss this case with anyone else or among your own group as jurors. Withhold your consideration, your determination about the facts in this case until you have heard it all. You may now walk out with the Marshal. We will see you back here at 2:30. Please go to the jury room. Mr. Crimi and Mr. Cohen, before you leave there are one or two questions I have.

(Jury escorted from the courtroom.)

THE COURT: On schedule, it appears that tomorrow afternoon I will have to leave here at 3:30. You have some problem on Friday?

MR. CRIMI: I have a problem, your Honor. Well, to minimize the problem, I could say that my problem only exists from 12:00 on on Friday.

THE COURT: I see.

MR. CRIMI: But actually, probably it exists --

THE COURT: What is it?

MR. CRIMI: The Bar Association is having a

criminal law seminar.

THE COURT: And you are still the president?

MR. CRIMI: Right, and I am supposed to lecture in the afternoon. I would like to be there sometime in the morning, but at the same time if it is necessary, I could continue here until noon.

THE COURT: I think it would be better if we plan to suspend on Friday and then we would also suspend tomorrow afternoon at 3:30 and then we would continue next week.

MR. COHEN: Would that be Tuesday, your Honor?

MR. CRIMI: Monday or Tuesday?

THE COURT: We would continue on Tuesday.

MR. CRIMI: All right.

THE COURT: We are going to pick a jury in that monster civil case on Tuesday. We will know better. There is always the chance that we may settle the civil case so we will be able to tell you the time of return, - we will set that tomorrow.

MR. CRIMI: All right, sir. Thank you.

MR. COHEN: Thank you, your Honor.

THE COURT: We will be in recess.

(Recess taken at 12:33 p.m.)

H. T. NOEL
OFFICIAL REPORTER, U.S. DISTRICT COURT
* * * * * * * *

PROCEEDINGS: October 30, 1974, 3:15 p.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury present.)

THE COURT: Ladies and gentlemen, there is something I meant to say to you before and forgot to, and I wanted to be sure to say this to you. During the recess breaks when you are coming in and going out of the building, it is apparent that we only have two elevators or three at the most, that probably you may run into some of the lawyers or witness or defendant and so forth and so on. Do not talk to them about the case, certainly, but it is best if you do not talk to them about anything at all. Be polite. Say, "Good morning" and "Good afternoon", but it may be misunderstood if, for example, you saw one of the revenue officers or one of the other witnesses coming in and going out and you just stopped to chat with him. Certainly, there would be nothing wrong with it, but it just does

not look right, so when you come here and you see someone, just say "Good morning" and go to the jury room and then as you are leaving for the evening, follow the same routine.

Mr. Crimi.

MR. CRIMI: Yes, your Honor.

K E I T H G R I Z Z L E, a witness called by and in behalf of the Government, having been previously duly sworn, resumed the witness stand and testified further as follows:

CROSS EXAMINATION BY MR. CRIMI (Resumed):

Q I only have a few more questions, Mr. Grizzle, to ask of you. Drawing your attention to these exhibits, which of these exhibits, - just give me the numbers, - were the ones that you say you saw the accused give to Mr. Cephas?

A This one, Exhibit 6.

Q Exhibit 6?

A Yes.

Q Okay. Now, can you tell me where it was that you saw this?

A I saw the accused giving it to him?

A Yes.

A. At my sister's house.

Q. And at that time, where do you say that the accused got that exhibit from?

A. I couldn't say. From Rochester here.

Q. No, no. I mean, did he pull it out of his pocket, did he pull it out of a bag?

A. Out of his pocket.

Q. Which pocket was it, do you recall?

A. I think it was his left hip pocket.

Q. His left hip pocket?

A. Yes.

Q. And did he pull the other documents out of the left hip pocket?

A. That's right.

Q. And did he show them to Mr. Cephas?

A. He gave it to him.

Q. He gave it to him.

A. Yes.

Q. And how far away were you from Mr. Cephas at the time that he received these from the accused, as you say?

A. About a yard or so.

Q. A yard away?

A. Yes.

Q. And that I take it is three feet, is that correct?

A. That's correct.

Q And at that distance, were you able to read what was on this exhibit?

A No.

Q Well, did you know what it was by observing it?

A That's right.

Q You could observe?

A Yes, I could know what it was.

Q You knew what it was?

A Yes.

Q And I take it was that from reading something on it?

A No. I had one almost identical to it.

Q In your hands, is that correct?

A That's correct.

Q Now, this was not in the possession of Mr. Cephas, is that correct, until after the accused gave it to him?

A That's correct.

Q Now, was it your understanding that Mr. Cephas had come from the United States with the accused?

A No.

Q Had you seen Mr. Cephas in Toronto?

A No.

Q Was this the first time you saw Mr. Cephas in Toronto, is that correct?

A Yes, yes.

Q What did Mr. Cephas do with this when he, as you say,

received it from the accused?

A. He was told to memorize it.

Q. No, what did he do?

A. He held it in his hands.

Q. He held it in his hands?

A. Yes.

Q. And you could tell, I imagine, from the way he looked at it that this is the first time he saw it, is that correct?

A. That's correct.

Q. And he was told, you say, that he should memorize what was on it, is that correct?

A. That's correct.

Q. Okay. Now, you are from Jamaica, is that correct?

A. Yes.

Q. And I don't know whether you testified to this or not, but you lived with Monica Pryce for five years in Jamaica?

A. That's correct.

Q. All right, and during the time that you lived with Monica Pryce, you were planning on coming to the United States, is that correct?

A. That's correct.

Q. And you were dreaming, I suppose, about coming to the United States?

A. That's right.

Q. And this was because you had asthma?

A. Yes.

Q. And this was because the economic conditions were bad in Jamaica?

A. Yes.

Q. And during the period, the five years, both you and Monica were planning about the possibility of your coming to the United States, is that correct?

A. That's correct.

Q. Now, subsequently, and sometime in early '73, Monica came to the United States, is that correct?

A. That's correct.

Q. And after she came to the United States, you then went to Canada, is that correct?

A. That's correct.

Q. And when you went to Canada, it was your plan not to stay in Canada, but to get to the United States, is thatcorrect?

A. Yes, sir.

Q. And so that when you got to Canada and you said you were planning for a vacation, that wasn't true, was it?

A. That's correct.

Q. Now, you wanted some help to get into the United States, is that correct?

A. That's correct.
Q. And Monica planned it with you, isn't that correct?
A. That's correct.
Q. And both you and Monica were planning to get you into the United States illegally, is that correct?
A. I don't think she looked at it as illegal. I would suppose she wanted somebody to sponsor me.
Q. And she wanted to find a friend to sponsor you, is that correct?
A. Not a friend. She don't have any friends in America other than the Pryce family.
Q. At any rate, it was her plan and your plan to get into the United States, is that correct?
A. That's correct.
Q. And you had to do that within the three week limit, isn't that correct?
A. That's right.
Q. Now, I think you testified that you had made no inquiry concerning how you could get into the United States legally, isn't that correct?
A. I personally didn't.
Q. You personally didn't?
A. No.
Q. Now, you were faced with a three week limitation, but you made no inquiry about how to get into the United

States legally, is that correct?

A. That's correct.

Q. But at the same time, thought, you fully intended to get into the United States?

A. That's right.

MR. CRIMI: One moment, your Honor. I have no further questions, your Honor.

THE COURT: All right. Anything else, Mr. Cohen?

REDIRECT EXAMINATION BY MR. COHEN:

Q. Yes, I have a couple of questions on redirect, your Honor. Mr. Grizzle, you said that you did not make an inquiry about getting into the United States?

A. Yes, I did.

Q. And did anybody else make an inquiry about your getting into the United States?

A. Yes.

Q. And who was that?

A. Monica Pryce.

Q. Mr. Grizzle, were you telling the truth on the stand today?

A. Yes, I was.

MR. CRIMI: I didn't hear that last question.

THE COURT: We will strike that last question

and answer. That judgment, ladies and gentlemen, must be made by you. The question "Are you telling the truth", and the answer "Yes", is certainly self-serving and it really doesn't help the inquiry. You are to make up your mind upon the credibility of any witness, not only upon his direct, but his cross examination about the facts in the case and how his testimony compares and jibes with other testimony and other exhibits in the case. All right, Mr. Grizzle, thank you. Next witness, please.

* * * * * * * * * *

M O N I C A P R Y C E (102 Clifford Avenue, Rochester, New York), a witness called by and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. COHEN:

Q. Mrs. Pryce, where were you born?

A. Kingston, Jamaica.

Q. And of what country are you a citizen?

A. Jamaica.

Q. And when did you arrive in the United States?

A. 30th of June, 1973.

Q. And from what country did you come?

A. Jamaica.

Q. What is your legal status in this country?

A. I am a permanent resident.

THE COURT: Can you keep your voice up, please?

THE WITNESS: I will try.

THE COURT: You are a permanent - -

THE WITNESS: Yes.

THE COURT: What?

THE WITNESS: Resident.

THE COURT: You are a permanent resident?

THE WITNESS: Yes.

THE COURT: Next question, please.

BY MR. COHEN:

Q. Do you know an individual named Keith Grizzle?

A. Yes.

Q. Could you tell us what your relationship with Mr. Grizzle is?

A. He is my kid's father.

Q. And could you tell us who the father is of the child

you are now carrying?

A. Keith Grizzle.

Q. Directing your attention to June 14, 1973, where were you?

A. On June 14th?

Q. 1973.

A. I was in Jamaica at that time.

Q. And directing your attention to September 14, 1973, would you tell us where you were?

A. I was in Rochester.

Q. Did there ever come a time during September, 1973 when you left Rochester?

A. Yes.

Q. And where did you go?

A. Canada.

Q. And who did you, - and when was that?

A. 14th of September.

Q. And who did you see in Canada?

A. Keith Grizzle.

Q. How long were you in Canada?

A. About two days, went there on Friday and came back on Sunday.

MR. CRIMI: I am sorry, your Honor, I can't hear the witness.

THE COURT: You will have to take your time

and speak up. Can you pull the mike down a little bit. All right. Speak up as loudly as you can, please.

BY MR. COHEN:

Q Where were you in Canada?

A In Toronto. I don't remember the address. It was on O'Connor Drive.

THE COURT: What drive?

THE WITNESS: O'Connor.

THE COURT: O'Connor?

THE WITNESS: Yes.

BY MR. COHEN:

Q Did you ever have a conversation with Keith Grizzle while you were in Canada?

A Yes.

Q And where was that?

A It was on the 15th of September.

Q And what did you say and what did he say?

MR. CRIMI: I am going to object to that, your Honor.

THE COURT: All right.

MR. COHEN: Your Honor - -

THE COURT: I know your theory, Mr. Cohen. I think it is best if we not hear that

conversation at the present time. I will sustain the objection.

MR. COHEN: We have already had substantial background.

THE COURT: I know your argument, Mr. Cohen. Please get on with asking about other conversations.

BY MR. COHEN:

Q Mrs. Pryce, where did you go after you left Canada?

A Came back to Rochester.

Q And what happened?

A A few days after - -

THE COURT: Where did you go to?

THE WITNESS: Rochester.

THE COURT: All right.

THE WITNESS: A few days after Junior came over to his sister's house, Junior Price.

BY MR. COHEN:

Q Were you there?

A Yes.

Q And - -

THE COURT: How are you related to Junior or to Carol Pryce?

THE WITNESS: He is my husband.

THE COURT: He is your brother?

THE WITNESS: No, husband.

THE COURT: He is your husband. I see. All right.

BY MR. COHEN:

Q Now, is he your ceremonial husband?

MR. CRIMI: I object to that question, your Honor.

THE COURT: She has answered the question.

MR. COHEN: Your Honor, on cross examination the door was opened by asking Mr. Grizzle whether or not Mrs. Pryce was a common law wife.

THE COURT: I don't know what you mean by "ceremonial". There is an objection. I will sustain the objection.

BY MR. COHEN:

Q And were you present when he came over?

A Yes. We were talking with him over there. We were talking about Canada.

MR. CRIMI: I object to the conversation.

THE COURT: Who was this with and when is the

conversation?

BY MR. COHEN:

Q When did this conversation occur?

A After I came back from Canada.

THE COURT: And who were you talking to?

THE WITNESS: To Junior Price.

BY MR. COHEN:

Q And this Junior Price, do you see him here today?

A Yes.

Q Could you, - would you just describe his clothing to us, please?

A He has on a blue polka dot suit, light blue shirt and a floral tie.

Q Could you tell us where he is sitting, please?

A He is sitting over on the right beyond the desk.

Q Now, at that time, did you have a conversation with him?

A Yes. We were. He said - -

MR. CRIMI: I object to the conversation at this point. I won't object to the fact she had a conversation.

THE COURT: Very well. Ladies and gentlemen, there are some things I want to talk to the lawyers about and rather than have

us step to the sidebar here, and it may take a few minutes, it seems to me best, why don't you go down. I think it would be best if you went down to the jury room for a few minutes. We will have you back up shortly.

(Jury escorted from the courtroom.)

THE COURT: Mr. Crimi.

MR. CRIMI: Yes, sit.

THE COURT: Perhaps it would be best, Mrs. Pryce, if you stepped out into the corridor and we will have you back in a few minutes when we are ready.

(Witness escorted from the courtroom.)

THE COURT: Mr. Crimi, if I understand your objection, you object to this line of conversations between Mrs. Pryce and your client because they are protected by husband-wife?

MR. CRIMI: That's right.

THE COURT: Is that it? Are they confidential

communications?

MR. CRIMI: Certainly, this one, the present one is, as far as I know. It was just, as I understand it, it was just he and she. What I want to say is this, I think there is two bases for my objections. I guess I can speak freely. The first one is that I believe this is a confidential communication arising out of the marriage relationship. The reason I say that is this; we have here a case in which Mrs. Pryce is asking her husband to do something for her, for the benefit of Mr. Grizzle. She is particeps criminis, as we used to say.

THE COURT: A very eloquent statement.

MR. CRIMI: In Latin IB and I think it falls into the category of a confidential relationship. Now, in cases that Mr. Cohen has cited, the Piera case, that case dealt where the wife was a victim, where she was actually fleeced by these two sharpsters and during the course of the fleecing process one of them married her, but then she was victimized by the

taking of her money and other valuables from her and, of course, the Supreme Court said well, this would not fall within the confidential relationship.

THE COURT: What about the Lutwack case?

MR. CRIMI: Now, the Lutwack case I think is distinguishable also because again in the Lutwack case you had a situation where there were strangers. They were operating some sort of a marriage ring ring in which they married servicemen and got into the United States. Well, what I say, though, if we get involved in that, then we are going to get involved in my second basis for the objection which is we are going to get involved in another crime bit which is, will become highly prejudicial, but in Lutwack, the defendants there were charged with defrauding the United States by making fraudulent representation as to the husband and wife situation. This is not the charge here in this case. In this case we are not dealing with the phony relationship.

THE COURT: Not bringing the phony relationship

between Mrs. Pryce and Mr. Pryce.

MR. CRIMI: Right. What we are doing here is, actually, he is accused of bringing in a third party, Mr. Grizzle, and in the Lutwack case the defendants were accused with marrying the Europeans in order to get in, get the Europeans in, and I think that those cases, therefore, are - -

THE COURT: In that case, even though they were married, the Court permitted testimony about the circumstances of how they got in and how the marriage was arranged and all the rest of it.

MR. CRIMI: That's right.

THE COURT: All right.

MR. CRIMI: But I think that was because it was extremely relevant to the crime that was trying to be proven. That is my position.

THE COURT: Mr. Cohen.

MR. COHEN: First of all, your Honor, my position is that he waived this objection by allowing Monica Pryce to testify. The privilege goes to the full testimony of the wife against the husband.

THE COURT: What do you mean, Mr. Crimi waived by permitting her to testify?

MR. COHEN: Yes, your Honor.

THE COURT: He couldn't, very well, keep her from the stand, could he?

MR. COHEN: Yes, your Honor.

THE COURT: How could he do that?

MR. COHEN: Because it is my understanding that the privilege goes to the wife's competency to testify in a criminal action against her husband. That is the nature of the testimony in this case.

THE COURT: All right.

MR. COHEN: Aside from that, I would like to meet the issues head on.

THE COURT: All right. You tell me why you should be able to get her testimony?

MR. COHEN: The first issue is the intended confidentiality of the relationship. In a conspiracy, - in a crime such as this, where Mrs. Pryce is making arrangements through somebody else to obtain something for Keith Grizzle in order for Keith Grizzle to take advantage of those arrangements, he has to know about them and in

order to know about them, he has to be told and since Mrs. Pryce made these arrangements, regardless of who it was, with whom it was with, she did it with the idea of telling Mr. Grizzle. That is inherent in this situation. With respect to the other point raised by Mr. Crimi, I believe the Lutwack case is quite controlling in this situation. The issue wasn't, - in which resolved by the Court when the wives were allowed to testify. It was not the nature of the crime charged. It was the nature of the relationship being protected and where there was a fraudulent marriage to begin with, there was no relationship to protect. The Court will recall - -

THE COURT: You are beginning to offer evidence on that, and you were cut off and I wanted to have an out-of-court meeting to hear what evidence you would have before I listened to it before the jury.

MR. COHEN: Your Honor - -

THE COURT: If Mrs. Pryce testified about the facts of her marriage to Mr. Pryce, what

would she testify to?

MR. COHEN: She would testify that at the time she married Mr. Pryce, she was living with Keith Grizzle and she had a child by him at that time; that Mr. Pryce visited Jamaica - -

THE COURT: Let us get it correct. She lived with Keith Grizzle?

MR. COHEN: And she has a child by him.

THE COURT: She had a child.

MR. COHEN: Prior to that - -

THE COURT: Yes.

MR. COHEN: She had had two children, I believe by Barrington Pryce.

THE COURT: And Barrington is the brother of - -

MR. COHEN: The defendant, your Honor.

THE COURT: The defendant, all right.

MR. COHEN: Then in 1971 while she was living with Keith Grizzle, Junior came to Jamaica for a visit.

THE COURT: Yes.

MR. COHEN: She married him in a ceremony and then returned to continue relationships with Keith Grizzle.

THE COURT: And then the defendant - -

MR. COHEN: The very next day, she applied - -

THE COURT: Did the defendant stay in Jamaica or did he leave for the United States?

MR. COHEN: It is my understanding that shortly thereafter, he left for the United States.

THE COURT: All right. Did Carol and Monica Pryce live together at all?

MR. COHEN: On June 30th, - I believe it was June 30, 1973 when she came to the United States, she lived with Carol Pryce.

THE COURT: She lived here in the States?

MR. COHEN: Right, and in his apartment until the beginning of August, for a period of a month. I do not know whether or not they had sexual relationships during that period.

THE COURT: You don't know what she would say about that?

MR. COHEN: No, your Honor.

THE COURT: At any rate, she lived there for a time and then what happened?

MR. COHEN: On August, she moved to the apartment on, - next to Mr. Pryce's sister and she has not had sexual relations, I can say that, with Mr. Pryce since

then. That is when this - -

THE COURT: Mr. Grizzle then returned and she and he are living in Rochester together?

MR. COHEN: Yes.

THE COURT: And have been since last fall, right?

MR. COHEN: Right.

THE COURT: Would she testify, - was there a conversation between Monica and Carol Pryce before they entered into the marriage? How did it come about? Did she tell you?

MR. COHEN: I believe it came about because of the fact that she had the child by Barrington and it was arranged through that.

THE COURT: Did she tell you, Mr. Cohen - -

MR. COHEN: I believe that is what she told me in May, your Honor. I haven't had an opportunity to re-examine her on these specific questions since May.

THE COURT: There may be a number of reasons for the marriage. One is that Carol and Monica wanted to get married in spite of her connection with Barrington and with Keith. They did get married. They did

live together for awhile, but I would think that from what you say, if so, that this was only a convenience thing, if Monica and Carol were married because they had a plan by which she could get to the United States because of the marriage - -

MR. COHEN: That is exactly what she told me as being the reason why she married Carol Pryce.

THE COURT: I hope that you were able to get that out of her quicker than I was able to get it out of you. Is that what she would testify to?

MR. COHEN: Yes, your Honor.

THE COURT: Why did they want to come to the United States, she and Keith?

MR. COHEN: I know that they both felt that they could improve their economic condition. Keith has always told me the same.

THE COURT: Where is Barrington now?

MR. COHEN: It is my understanding Barrington Pryce is a resident of Rochester, New York.

THE COURT: Is he a citizen of the United States?

MR. COHEN: He is a permanent resident alien in the United States. I am not sure whether or not he has been admitted to citizenship. I know he does have custody of one of the children by his, - by Monica Pryce. I do not know the status of the proceedings to obtain, to re-obtain custody of that child by Monica Pryce, although I have made inquiries into that. I do know that at the present time there is a divorce proceeding being instituted or already underway by Monica Pryce against the defendant.

THE COURT: All right. She would testify to that?

MR. COHEN: Yes, your Honor.

THE COURT: And the papers are filed?

MR. COHEN: I don't know the exact status. I do know that it is more than just talk.

THE COURT: Mr. Cohen, what about Carol Pryce? Is he a United States citizen, a permanent alien or what is his status?

MR. COHEN: Your Honor, it is my understanding he is a permanent resident alien.

THE COURT: Mr. Crimi, in response to all of this, do you want to say anything further?

MR. CRIMI: Well, yes, your Honor. I feel that in light of what he said that I think it is significant that he didn't say that she included Mr. Pryce in, apparently, her plans. If it is true that she is going to testify that it was her intention to marry Carol Pryce so that at a future time that she could get Grizzle in from Canada, although I don't see how that connects up, but I guess, for her to get in. The fact remains that they were married; that the marriage apparently is legal. It is necessitating a divorce to cut it asunder, and that by living together for, I guess, a month of so or more, and it would seem to me that her conversation under the facts of this case, because she is so deeply involved in the, - and apparently is a co-conspirator, unindicted, would seem to come under a confidential relationship.

THE COURT: The other thing, Mr. Cohen, I cut you off, and that is, you want to bring in testimony about the conversation between Monica Pryce and Keith Grizzle in

Toronto sometime in, I think, mid-September of '73.

MR. COHEN: Yes, sir.

THE COURT: All right, so that we understand, what will be the substance of that conversation?

MR. COHEN: The substance of that conversation was that she and Keith discussed his getting into the country and she decided to see if she could find someone that could help them get in.

THE COURT: No mention of Mr. Pryce's name at that time?

MR. COHEN: No, your Honor.

THE COURT: Do you want to put this in under the theory that these individuals are conspirators?

MR. COHEN: Yes, your Honor.

THE COURT: When was the conspiracy formed?

MR. COHEN: It was formed at, - apparently from hearing the testimony of Mr. Grizzle on cross examination those two formed the conspiracy prior to coming to the United States. It was my impression that the conspiracy was formed on September 14th

or September 16th when they had that conversation about actually getting him in and I took the starting point of September 14th for purposes of the indictment, the first conversation in this hemisphere, - in Canada, occurred on the 16th and that was between Mr. Grizzle and Monica Pryce.

THE COURT: All right. When was the first conversation between Carol Pryce and any of the individuals?

MR. COHEN: That is, - would have occurred, - that, according to Monica Pryce occurred a couple of days later in Rochester.

THE COURT: And that is the one that you want to get in now?

MR. COHEN: That's correct, your Honor.

THE COURT: It seems to me in some of the questions I have put to you, Mr. Cohen, and I realize that there is a problem here of understanding one another. As far as the verbiage and language is concerned, of course, Monica Pryce and Mr. Grizzle, no question about speaking English, but I think that some of the

words we use here are not familiar to them and perhaps the other way around. In my asking you, for example, about some of the background of the marriage between Monica and Carol, and the reasons for the marriage and what the agreement was when they entered into the marriage, did they intend to, - when they said, "To death do us part", did they really mean that or was there some reservation in their wedding contract. These things, it seems to me about how Mrs. Pryce could testify when she returns to the stand, they are not clear to you at this stage. Before we have her come back and testify, I think that you ought to know exactly You should be - -

MR. COHEN: Your Honor, I am satisfied she would testify - -

THE COURT: I think you should have a clear expectation of what she is going to say so that you don't say one thing to me and to Mr. Crimi and then have her get on the stand and say something which is quite different. It can happen, but I

think you ought to satisfy yourself if you make a representation that it is made with a clear understanding of what she would do. I think it would be best to take a break. This has been slow going here, and for you to sit down, you and Mr. Skretny, and talk to her and find out exactly what she would testify to about all of these matters.

MR. COHEN: I have done that once before. I think it is a good idea, given the length of time to do that again. I appreciate the opportunity to do that.

THE COURT: You can talk to. I would think that with any witness, Mr. Cohen, in any case, that is important enough to convene a jury on that it seems to me that in addition to talking to a witness some months before trial, you should again talk to the witness when the case is up and ready. In other words, what I am thinking I want to do here, I want to think about the offer and I want to also give Mr. Cohen an opportunity to talk to Mrs. Pryce so he will know or feels he will know what she

will testify to.

MR. COHEN: I would like to make it clear to the Court that we are not intending to offer Mrs. Pryce's testimony concerning her intentions when she married Mr. Pryce to the jury. It was our understanding that that was relevant in your determination of whether or not to allow her to testify concerning this conspiracy and the only time we would get into that was, - is if it were opened on cross examination.

MR. CRIMI: Your Honor, I would like to point out that it appears to me now that there is a strong possibility that this conspiracy may have commenced prior to September 14th, if what he says will be her testimony, because I believe he stated that she is going to testify that she married Carol Pryce as a way to get Keith Grizzle - -

MR. COHEN: That is not what I said.

THE COURT: I did not understand that, Mr. Crimi.

MR. CRIMI: No?

THE COURT: As I understand it, it wasn't clear

to me about why she married Carol Pryce. That is one thing, but at that time, the name of Keith Grizzle, at least in Mr. Cohen's explanation, did not come up. The first we heard of this Keith Grizzle is the testimony which the Government would like to offer about the conversation between Keith and Monica on about September 15th, where Keith says to her "I would like to get into the United States", and she said to him, "I will look around and see if I can find somebody that could help us".

MR. CRIMI: Yes, that is true, your Honor, but I may have misheard, number one, and number two - -

THE COURT: I think the reason we are going into the business about the marriage of Carol and Monica is to determine whether or not the husband and wife privilege can be asserted.

MR. CRIMI: That is true, but all I wanted to say is that it may develop that I may have an argument as to the conspiracy and the date of the conspiracy.

THE COURT: What about Mr. Cohen's suggestion in the testimony about the marriage be taken out of the jury's presence and I consider that as a Court question without leaving that to the jury?

MR. COHEN: The Government will recall that earlier before the case was set for trial, I did make a motion to have a hearing with respect to the admissibility of her testimony and I would like to renew that.

THE COURT: And I thought it better to wait for the trial.

MR. CRIMI: I would rather argue that after the hearing, pending whatever your decision is.

THE COURT: Should we have the witness retake the stand out of the jury's presence so she can tell us? If necessary, we can always have her repeat it before the jury.

MR. CRIMI: Yes, but I thought you wanted to give him time to talk to the witness.

THE COURT: Are you ready for the hearing now, Mr. Cohen?

MR. COHEN: I would like to have about five minutes with Mrs. Pryce.

THE COURT: Why don't we say this, take fifteen minutes and Mr. White, will you tell the jury they are excused until tomorrow morning at 10:00, please. All right. We will take a break and return in fifteen minutes for the hearing.

(Recess taken at 3:58 p.m.)

PROCEEDINGS: October 30, 1974, 4:20 p.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury not present.)

THE COURT: Now, we are convened again without the jury present and we will have a hearing on the problems which we discussed out of the jury's presence and before the recess. Mr. Cohen.

M O N I C A P R Y C E, a witness called by and in behalf of the Government, having been previously duly sworn, resumed the

witness stand and testified further as follows:

DIRECT EXAMINATION BY MR. COHEN (Resumed):

Q Mrs. Pryce, do you know an individual named Barrington Pryce?

A Yes.

Q And how do you know him?

A He is the father of my two son.

Q Did there come a time when you had a conversation with Barrington Pryce?

A Yes.

Q About entering the United States?

A Yes.

Q And when was that?

A It was, let's see, 1970.

THE COURT: 1970?

THE WITNESS: Yes, in Jamaica.

BY MR. COHEN:

Q Where was it?

A In Jamaica.

Q Where in Jamaica?

A Victoria Street.

THE COURT: What was the name of the street?

THE WITNESS: Victoria.

THE COURT: Victoria.

BY MR. COHEN:

Q What did you say and what did he say?

A I asked him if he know anyone could sponsor me to America and he said he didn't know, but he would find out after he got back.

THE COURT: He said after he came back?

THE WITNESS: Yes. He was on vacation in Jamaica.

THE COURT: All right. He would find out?

THE WITNESS: Yes.

BY MR. COHEN:

Q He was on vacation from where?

A America.

Q For what purpose?

A To take my son for a visit.

Q And as a result of that conversation, what happened?

A I didn't hear from him again until April.

Q April of what year?

A 1971.

Q And what did you hear from him?

A He told me that his brother was coming down on vacation and I could get married to him if I wanted to come to America.

Q And how did he tell you this?

A He wrote me a letter.

Q. And what did you do after you received that letter?

A. I showed it to my mother, father, Keith, and my mother says she cannot decide that for me because I am of age and I am living with Keith, I am of age, and Keith said since I am going to get some good in life, he gave me money to marry to Junior.

Q. After that time, did you see Junior Price?

A. Yes.

Q. Where did you see him?

A. He came to visit me at my home.

Q. Where?

A. 12 Victoria Street in Jamaica.

Q. And when did he come?

A. I don't remember the date, but it was in May.

Q. And did you talk to him?

A. Yes. He asked me if I get the letter from his brother and if I agree and I said, "Yes".

Q. And then what happened?

A. Then the next day we went and looked about the marriage and he says if I got married to him, I could sponsor his two kids as their stepmother, to let them come to America.

Q. What do you mean "sponsor"?

A. I am the stepmother so I apply for the visit at the same time I apply for mine.

Q All right.

THE COURT: Before we go along here any further, Mrs. Pryce, you said you talked about this problem with your mother and your father?

THE WITNESS: Yes.

THE COURT: And with Keith Grizzle?

THE WITNESS: Yes.

THE COURT: And Keith said, as I understood you to testify, that he would pay for the marriage?

THE WITNESS: Yes.

THE COURT: What happened, what did he mean by that?

THE WITNESS: See, whenever you go to get married, you have to pay to get the license before you can get married.

THE COURT: Was that just for the license?

THE WITNESS: Yes.

THE COURT: Any other monies paid to Carol or Barrington?

THE WITNESS: No.

BY MR. COHEN:

Q Okay. Now, the two children about which Carol spoke to you about, now, whose children were these?

A They are Carol's children.

MR. CRIMI: Carol's?

THE WITNESS: Yes.

MR. CRIMI: This is complicated.

THE COURT: Go ahead, Mr. Cohen.

BY MR. COHEN:

Q Now, did you marry Carol Pryce?

A Yes.

Q And where did you marry him?

A We went to Justice of the Peace.

Q And about what time?

THE COURT: That was in Kingston?

THE WITNESS: Yes.

THE COURT: All right, and about what date was this, or month?

THE WITNESS: The 20th of May, 1971.

BY MR. COHEN:

Q About what time of the day did you marry him?

A Around 10:00 o'clock in the morning.

Q And did you leave him?

A Yes. He came back and he dropped me at my house and he went his way.

Q All right, and when was the next time that you saw Carol Pryce?

A. I didn't see him again until when I came up here.

Q. Which was when?

A. The 30th of June, 1973.

THE COURT: You say that after May 20, 1971 - -

THE WITNESS: Yes.

THE COURT: He dropped you off at your home?

THE WITNESS: Yes.

THE COURT: After the ceremony?

THE WITNESS: Yes.

THE COURT: And then you didn't see him again until June of 1973?

THE WITNESS: Yes.

THE COURT: All right. Go ahead, Mr. Cohen.

BY MR. COHEN:

Q. And when you arrived in the United States, did you see Barrington Pryce again?

A. Yes.

Q. And did you have a conversation with either one of those gentlemen relative to the marriage?

A. Yes. Barrington picked me up at the airport.

Q. Who picked you up?

A. Barrington.

THE COURT: Which airport, Rochester?

THE WITNESS: Yes.

THE COURT: How did you come to the United States then?

THE WITNESS: By plane. I came to New York and then I get another plane from New York to Rochester.

THE COURT: What papers did you have? Did you have a passport or a visa?

THE WITNESS: Yes, I had my papers to prove I applied.

THE COURT: And the papers, did they identify you?

THE WITNESS: Yes.

THE COURT: As Monica Pryce?

THE WITNESS: Yes.

THE COURT: All right, wife of Carol Pryce?

THE WITNESS: Yes.

BY MR. COHEN:

Q To back track a little bit, what date did you marry Carol Pryce?

THE COURT: May 20, 1971.

BY MR. COHEN:

Q And after your marriage, did you apply for any visa to emigrate to the United States?

A Yes.

Q And when did you do that?

A. The 21st of May, 1971.

Q. And in due course, were you issied a visa?

A. Yes.

Q. And you came to the United States. Okay. Now, who was it picked you up at the airport?

A. Barrington.

Q. And did you have conversation with Barrington?

A. Yes.

Q. When he picked you up?

A. He said because I didn't get charge of the kids Junior said I would have to pay $400.

Q. What did you say?

A. I told him I don't have $400 on me so as soon as I start working I would pay it.

THE COURT: Excuse me. Let us back up. You are talking to Carol or Barrington?

THE WITNESS: Barrington.

THE WITNESS: Yes.

THE COURT: There was some talk about $400?

THE WITNESS: Yes.

THE COURT: What was said about the $400?

THE WITNESS: He said Junior said I would have to pay him $400 because I didn't get to carry his kids.

THE COURT: I see. You didn't get the visas for

his kids?

THE WITNESS: No.

THE COURT: Now, Barrington said to you that Junior says that you owe him $400?

THE WITNESS: Yes.

BY MR. COHEN:

Q Now, at the time that you came to the United States, June 30, 1973, whom were you living with before you left for the United States?

A Before I left for the United States?

Q Yes.

A I was living with Keith.

Q And did you live with him up until the time that you left for the United States?

A Yes.

Q Okay. Now, with respect to that conversation - -

THE COURT: On that point after May, 1971, were you living with Keith then?

THE WITNESS: Yes.

THE COURT: Had you been living with Keith before May, 1971?

THE WITNESS: Yes.

THE COURT: For about how long?

THE WITNESS: About two or three years before.

THE COURT: About two or three years before?

THE WITNESS: Yes.

THE COURT: But after May of 1971, you continued to live with Keith?

THE WITNESS: Yes.

THE COURT: And you continued to live with him right up to June of 1973, when you came to the United States?

THE WITNESS: Yes.

THE COURT: Very well.

BY MR. COHEN:

Q Did you pay anybody $400?

A No. He said, - Junior said after the arrest came and all this commotion, Junior said I must take my money and look about a divorce.

Q Have you instituted a divorce proceeding against Junior?

A Yes.

THE COURT: So there is no question about what we mean or what Mr. Cohen means by "institution", before we get to that we are just talking about the connection between you and Carol Pryce. When you got here and you met him, Carol Pryce,

then you lived in Rochester then?

THE WITNESS: Yes.

BY MR. COHEN:

Q Where did you live?

THE COURT: Who did you live in Rochester with?

THE WITNESS: First I stop at his mother.

THE COURT: Carol Pryce's mother?

THE WITNESS: Yes, for the Sunday and the Monday and the Tuesday I get an apartment at 210 Avenue A.

THE COURT: In Rochester?

THE WITNESS: Yes.

THE COURT: Who was the apartment with?

THE WITNESS: I was living alone.

THE COURT: You were living alone?

THE WITNESS: Yes.

THE COURT: Did you ever live with Carol Pryce?

THE WITNESS: No.

THE COURT: After the marriage ceremony, did you have sexual relations with him?

THE WITNESS: No.

THE COURT: Not at all since May of 1971?

THE WITNESS: No.

THE COURT: All right.

BY MR. COHEN:

Q. Did you have any at any time?

A. No.

THE COURT: We are now up to June of 1973 and we are talking about now, - Mr. Cohen asked you about the institution of divorce action. Do you have a lawyer in Rochester?

THE WITNESS: No. The lawyer is here in Buffalo.

THE COURT: The lawyer is here in Buffalo?

THE WITNESS: Yes.

THE COURT: What is his name?

THE WITNESS: Mr. Harrington.

THE COURT: Who?

MR. COHEN: Harrington, your Honor.

THE COURT: Harrington?

MR. COHEN: James Harrington, your Honor.

THE COURT: James Harrington, and as far as you know, did he file some papers?

THE WITNESS: Yes.

THE COURT: Did he have you sign something or other or did he just tell you that he filed some papers?

THE WITNESS: He tell me that he filed the papers.

THE COURT: All right, very well, but when did

you talk to Mr. Harrington?

THE WITNESS: After last night, his phone at home. I was supposed to go to him this morning, but this case came about.

THE COURT: I see. So that there is no misapprehension, when was the first time you talked to Mr. Harrington about this divorce proceeding?

THE WITNESS: In May.

THE COURT: In May of this year, 1974?

THE WITNESS: Yes.

THE COURT: Was that at his office here in Buffalo?

THE WITNESS: Yes.

THE COURT: Then did you meet with him after that?

THE WITNESS: No.

THE COURT: You did not meet with him again?

THE WITNESS: No, on the phone.

THE COURT: The first time did you meet with him in person or on the telephone?

THE WITNESS: In person the first time.

THE COURT: All right. During and since that time, you say you have talked with him on the telephone?

THE WITNESS: Yes, and he write to me because he write me a letter and say he served the papers to Junior.

THE COURT: All right. Do you remember about when that happened?

THE WITNESS: This was around three weeks.

THE COURT: Go ahead, Mr. Cohen. Anything else?

MR. COHEN: No, your Honor. Thank you.

THE COURT: Mr. Crimi.

CROSS EXAMINATION BY MR. CRIMI:

Q You are still married to Mr. Pryce, are you not, at this moment?

A Yes.

Q Now, I think you testified, Mrs. Pryce, that you had a conversation with Barrington Pryce in Jamaica around 1970, is that correct, and that would be about four years ago, is that right? I am sorry. You have got to give the answer so he writes it down. That would be about four years ago, is that right?

A Yes.

Q Okay. Now, at that time, you were living with Mr. Grisby?

A Yes.

Q Grizzle, I am sorry, is that right?

A. Yes.

Q. Okay, but you also had been living with Barrington Pryce before that time?

A. No, I never lived with him.

Q. Barrington, but you had children by him?

A. Yes.

Q. How many children did you have by him?

A. Two.

Q. Two, all right, and you, as I understand your testimony, you asked Mr. Barrington Pryce whether or not he could find someone to sponsor you, is that correct?

A. Yes.

Q. And that was because you wanted to come to the United States?

A. Yes.

Q. And you wanted to bring Keith with you, is that correct?

A. No, I didn't say that.

Q. You didn't say that. You wanted to go to the United States by yourself?

A. Yes.

Q. Okay. Now, a year later or so in April of 1971, you say Mr. Barrington Pryce wrote you a letter?

A. Yes.

Q. And in the letter, he told you that you could marry Carol Pryce?

A. Yes.

Q. And you showed this letter to Keith, didn't you not?

A. Yes.

Q. And you had a discussion about this letter?

A. Yes.

Q. And the discussion was concerning, I suppose, whether or not you should marry Carol Pryce?

A. That's it.

Q. And Keith said, agreed that you should marry Carol Pryce?

A. Yes.

Q. What was his reason? Do you know why he felt that you should marry Carol Pryce?

A. Well, we know that if I got to come to America, nothing gained.

Q. I see. After you got to America, you could get Keith into America, is that it?

A. Yes.

Q. So, and this was as early as 1971 that you were making plans to come to America, is that correct?

A. Yes.

Q. And Keith wanted this to happen so he said he would pay for the license fee, is that right?

A. Yes.

Q. Is it about a month later that Junior Pryce came into

Jamaica on vacation?

A. Yes.

Q. And at that time, did you have conversations with him as to the reason why you wanted to get married to him?

A. Oh, my God, repeat the question again.

Q. All right. I am sorry. Are you tired?

A. More than tired.

Q. All right. Did you have a conversation with Carol Pryce as to the reasons why you wanted to marry him?

A. No.

Q. All right. How long was he in Jamaica before you actually got married on his vacation? Was he there a week?

A. He was there about a week, the same week he came in.

Q. And Mr. Grizzle was there too, right, in Jamaica at that time?

A. Yes.

Q. And was there any conversations between the three of you concerning the impending marriage?

A. No.

Q. No. Well, did Mr. Grizzle attend the marriage?

A. No.

Q. He knew you got married, though?

A. Yes.

Q. Did he pay for the license fee?

A. Yes.

Q. And then, - but he wasn't there at the marriage?

A. No. He went to work.

Q. He went to work.

A. Yes.

Q. And following that, you say after the marriage, you returned home?

A. Yes.

Q. And did you talk, - did you tell Keith that night you got married to Carol Pryce?

A. Yes. He know I was going to.

Q. Pardon?

A. He know I was going to marry Junior from the morning. He knew about it.

Q. Yes, but when you got home, you told him that it happened?

A. Yes.

Q. Okay. Now, did the children that you bore of Barrington Pryce, did they ever come to the United States?

A. One is here.

Q. And how did that child come to the United States?

A. Barry sent for him.

Q. Barry sent for him?

A. Yes.

Q. All right, and is one still in Jamaica?

A. Yes.

Q Now, you say that in June of 1973, you came to the United States, is that correct?

A Yes.

Q And you came directly to Rochester?

A I came in the 30th of June. They said the plane could not land in New York, so they take me to Baltimore so we did not reach here until Sunday, which was the 1st of July.

Q Now, and then you went, - you stayed with Carol Pryce's mother for one night?

A For two nights.

Q Two nights?

A Yes.

Q And then you moved in an apartment at 210 Avenue C?

A Avenue A.

Q Avenue A. Now, did you write Keith and tell him to come to Canada?

A No.

Q No. How did it come about that he came to Canada shortly after you arrived in Rochester?

A Well, Keith, he is, - he has asthma. Keith hasn't good health in Jamaica and he was planning to leave Jamaica whether I leave or not.

Q I see, and what, - and he was going to come to, - he was planning to leave Jamaica to go where?

A. Either Canada or America.

Q. I see, so he, - but he went to Canada for a vacation, is that right?

A. Yes.

Q. And he must have advised you of that, is that correct?

A. Yes.

Q. And then you wrote him or went to see him again in Canada, is that correct?

A. Yes.

Q. Was it your intention when you married Pryce that not only you but Keith would eventually come into the United States?

A. Yes.

Q. That was your intention?

A. Yes.

Q. And you had planned on that, is that correct, as the result of your marriage?

A. Yes.

Q. And Keith knew about this, is that correct?

A. Yes.

Q. And you say all of this started pretty much about the time when you had a conversation with Mr. Barrington Pryce about 1970, is that right?

A. Yes.

MR. CRIMI: I have no further questions.

THE COURT: Mr. Cohen, any further questions?

MR. COHEN: No. Thank you, your Honor.

THE COURT: Any further evidence at the hearing?

MR. SKRETNY: May we just have one moment, your Honor?

MR. COHEN: Your Honor, the Government does have two letters in the name of Carol Pryce with an address at 10 Dudley Street in Rochester, New York, directed to the Immigration Service from both before and after Monica Pryce resided, - came to the United States and we can't say for sure that it is the handwriting of Carol Pryce but it does relate to the subject matter of the testimony and we would like to offer them for purposes of this hearing and this hearing only.

THE COURT: Do you object?

MR. CRIMI: I am going to object to this, your Honor.

THE COURT: I think they have to be authenticated in some other way, Mr. Cohen, as to the genuineness of the letters, so I will sustain the objection. All right. Mr. Crimi, the Government has nothing further

on the hearing. Do you have anything on the hearing?

MR. CRIMI: No. I have no evidence to present as such.

THE COURT: All right. The evidence on the hearing is closed. Let us do this. Will both of you look at the authorities overnight. I think here simply on the question about whether or not where we have a ceremonial, - ceremonial marriage, there is no, - the Government doesn't question that, there was a marriage before a Justice of the Peace and we are going to take it for granted that it was in accordance with the laws of Jamaica; it was a valid marriage; that the Government argues that it was a sham and therefore, the husband-wife privilege should not be permitted and that Mr. Pryce should not be permitted to prevent the testimony from coming in, so can we meet at 9:30, - would 9:30 be too early?

MR. CRIMI: No. I am planning to stay over.

THE COURT: You are staying over?

MR. CRIMI: I may have problems getting to the

authorities though.

THE COURT: We can do this. The United States Attorney's library is open. Certainly, Mr. Cohen would be most highly honored to have you there and maybe you can do some joint research and you could use our library, Mr. Crimi.

MR. CRIMI: All right, your Honor.

THE COURT: If you desire. Mrs. Pryce, we are going to have to adjourn until tomorrow morning. You come back, please. Be here, certainly at 10:00 o'clock.

THE WITNESS: Okay.

THE COURT: Mr. Pryce, you are excused until tomorrow morning. Follow the directions of your attorney. We will be in recess until tomorrow morning.

MR. SKRETNY: Thank you, your Honor.

THE COURT: Any law you can have to me as early in the morning as possible, maybe 9:00 o'clock, if you can do that.

MR. COHEN: Yes, sir.

(Recess taken at 4:48 p.m.)

* * * * * * * * * * * * *

PROCEEDINGS: October 31, 1974, 10:00 a.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury not present.)

THE COURT: Mr. Crimi and Mr. Cohen, we had discussion last night, a hearing on the question about whether or not Monica Pryce would testify about conversations with Carol Pryce, her husband, and have you done any research on that? Can you help me? What is your position on that, Mr. Cohen?

MR. COHEN: Your Honor, I researched Wigmore and Wigmore stated a broad attack, generally, on the privilege. He stated two reasons which were given to uphold the privilege where protection of the marital relationship, - in this situation it is obvious from the testimony of Mrs. Pryce that there never was any marital relationship worth protecting, deserving of protection. The parties never lived together as man and wife. They never set up the same household and, in fact, the only purpose of

their marriage was to get Mrs. Pryce into the United States.

In addition, each party has acted as a separate entity since the marriage. There has never been any action as a marital unit. Another criticism set out by Wigmore was an attack on the reasoning in decisions that it is against the feelings of Courts and individuals to have one person in a marital relationship condemn the other. It goes against human feeling and again in this instance that justification isn't applicable because there was no true marital relationship. There was no closeness, no unity of action. Each individual went his own way after the marriage. They never lived together. They never contemplated the closeness of marriages which have been given the protection.

In another section, Wigmore indicated in applying privileges and the right of a husband to prevent his wife from disclosing marital communications, that there had to be, - the communication

had to be made within the relationship and it had to be a communication which was not contemplated to be transmitted to another party and it had to be one made outside the presence of other people and certain of the conversations were made in the presence of another person. Those are de minimis in this situation, your Honor, but the very nature of the conversations themselves contemplate that the person for whose benefit they were intended would know of the conversations.

In other words, your Honor, if Monica Pryce was to testify that the defendant told her someone would be coming for Keith Grizzle on Monday, it should be expected that Monica Pryce would tell Keith Grizzle that someone would be coming for him on Monday so that he could be ready and, therefore, communications such as that certainly would not be one entitled to the privilege invoked here.

THE COURT: Mr. Crimi.

MR. CRIMI: If it please the Court, I want to start out by saying that, number one,

in my demand for a Bill of Particulars, I asked the Government to set forth what the relationship was between Carol Pryce and Monica Pryce and in their Bill of Particulars, the Government stated clearly that quote "Carol Pryce and Monica Pryce are husband and wife".

Secondly, under Rule 26, as I read the rule, the admissibility of evidence, competency and privileges of witnesses shall be governed, except when an act of Congress or these rules otherwise provide by the principles of common law as they may be interpreted by the Courts of the United States in the light of reason and experience, so I have not been able to find any Federal statutory law concerning the husband and wife privilege so I think we revert back to common law. I think there is, in the proposed rules of evidence, there is a section that deals with this, but that is not very clear and the proposed rules are not yet past the stage of being proposed at any rate and I think that at common law that

where there was a marriage relationship that the privilege would obtain. In this conjunction, I have read this United States vs. Diogo case, and at least as I read it and it seems to be a long and perhaps difficult case, but at least as I read it, it seems to indicate that where the marriage is valid, at the place of the, - or the domicile of the marriage that unless there is wome evidence to show that it is invalid, voidable, that that fact is established that there is a valid marriage existing, and I think that the case further says that where there is a prosecution in which the fact of the marriage would entail, - is directly involved in the charge, that then it is possible to go into the matter of whether or not the marriage was void or voidable. In that case, as I understand the prosecution was for these individuals apparently making statements which were false and the question of the materiality of the falseness was raised and even under those circumstances as I read the case,

the Court said that when they said that they were married in New York and there was no evidence that this marriage by New York Law was void, that they actually answered the question properly and they dismissed the indictment. Again, it seems that the Lutwack case is the only case that is tangentially helpful, but again, as I say, in Lutwack there was a different type of prosecution and the question to be answered there was the direct question as to whether or not the, - there was a marriage which was a sham marriage and whether or not that constituted a violation of the immigration laws, whereas here, we are really off center. What we are saying here is that there is a charge involving a third person who, - who arrangements are made to bring into the United States and these arrangements are made between a husband and wife who, as far as the proof shows, are validly married. Now, I don't know what the law of Jamaica is and there hasn't been any

proof about the law of Jamaica. It would appear that the law in New York is that even if parties get married and do not decide to enjoy the benefits of bed and board, they are still validly married. I don't know as to whether that is a void marriage per se, and there is evidence here that subsequent to the facts in this indictment that some activity has been started to dissolve the marriage, so I think my argument therefore, reduces itself to saying that there really is no proof here to cut under or cut asunder this marriage between these two and that these conversations were brought about between these two individuals and they are here as husband and wife in the United States. They wouldn't be, - she wouldn't be here in the United States to be conversant with him if they were not husband and wife and they are both involved in this situation. I think the proof shows that indeed the wife was the one who commenced the conversation and they are both

alleged to be co-conspirators and I think that that falls within the privileged communications.

THE COURT: We have to, before we can discuss the law, of course, we have to take the facts as they are in this particular case. We have the fact that these two individuals were married. The Government will agree and admit that, and then before that, however, we know that for some time, Monica Pryce had been living with Keith Grizzle and that during that period of time, she bore two children, - the father Barrington Pryce. After the marriage, the evidence is that Carol and Monica Pryce did not ever live together. The marriage was never consummated and that when she then came to the United States, there was some conversation that Monica owed Carol $400 because she did not bring in two children of Carol's by another relationship to the United States, so that it appears to the Court that the parties never intended to live as husband and wife. The reasons for the

husband and wife privilege which Mr. Cohen discussed, - that is the protection of the marital relationship and the fact that if you let husband or wife testify against the other, it certainly would create a spirit of disunity, would destroy the marriage, - that is not at all present here. At the present time, and for all of the history that we have heard in this particular case, Monica Pryce has lived with Keith Grizzle and I think your comment upon the rules, Mr. Cohen, - the proposed rules of evidence, - it certainly leaves this question up in the air. It just doesn't seem to treat of it at all and therefore, I find that under all of the circumstances, that Monica can testify about conversations that she had with Carol Pryce and while we are at it, we also discussed yesterday the problem of her conversations with Keith Grizzle. It seems to me that the evidence is now sufficiently along for us to say that there was a conspiracy sufficiently formed so that these two

individuals were conspirators and their conversations, one with another, may be received in evidence, especially since we now know that shortly after her conversation with Mr. Grizzle in the middle of September, that she did have a conversation with Carol Pryce a day or two later, so, Mr. Crimi - -

MR. CRIMI: I just want to note my exceptions to your ruling.

THE COURT: All right, fine.

MR. COHEN: Thank you.

THE COURT: Mr. White, call the jury up, please.

(Court Exhibits numbered 21 and 22 marked for identification.)

(Jury returns to the courtroom at 10:15 a.m.)

THE COURT: Good morning, ladies and gentlemen. We are now ready to resume. Mr. Cohen, Monica Pryce was on the stand, I believe.

MONICA PRYCE, a witness called by and in behalf of the Government, having been previously duly sworn, resumed the witness stand and testified further as follows:

REDIRECT EXAMINATION BY MR. COHEN:

THE COURT: Mr. Cohen, go ahead.

BY MR. COHEN:

Q Mrs. Pryce, directing your attention to September 14, 1973, could you tell us where you were?

A I was in Canada.

Q And who did you see?

A Keith Grizzle.

Q And where in Canada were you?

A Toronto.

Q And how long were you in Canada?

A Two days.

Q Did you have a conversation with Mr. Grizzle while you were in Canada?

A Yes.

Q And where did that take place?

A At his sister's home at O'Connor Drive.

Q In what city?

A Toronto.

THE COURT: Excuse me. Mrs. Pryce, keep your voice up, please. It is very important

that the jurors hear everything.

THE WITNESS: Okay.

THE COURT: You can pull your chair up further if you desire so you can speak into the microphone. Just take your time, Mr. Cohen, so that the witness has plenty of time to respond.

BY MR. COHEN:

Q Yes, your Honor. Would you tell us, please, what you said and what he said?

MR. CRIMI: Excuse me, your Honor. I will have a continuing objection.

THE COURT: You object. Overruled.

THE WITNESS: He asked me if I could get someone to help him to come over to Rochester where I am so I told him I would try as soon as I get back over.

BY MR. COHEN:

Q And where did you go from Canada?

A Back to Rochester.

Q And what happened after you returned to Rochester?

A A few days after Junior Pryce came over.

Q All right. About what day was that?

A He came around the Tuesday or the Wednesday because I came back Sunday night.

MR. CRIMI: Excuse me. I am sorry. I haven't been able to hear a word. I will stand up.

THE COURT: Please, Mrs. Pryce, this is important and I know it is an effort, but it won't take too long, and keep your voice up and speak as slowly and as clearly and as loudly as you can.

THE WITNESS: Okay.

THE COURT: Where were you in Rochester then?

THE WITNESS: At Avenue A at my home.

THE COURT: At your home at Avenue A in Rochester?

THE WITNESS: Yes.

BY MR. COHEN:

Q And who was present when Mr. Pryce arrived?

A No one. Just him and I was talking.

THE COURT: No one, and then what did you say?

THE WITNESS: Just I and Junior was talking.

BY MR. COHEN:

Q And who is Junior Price?

A Carol Pryce, my husband.

Q And is he here today?

A Yes.

Q Would you describe him for the jury, please?
A He has a blue coat, striped blue shirt and is sitting on the right-hand side.
THE COURT: Go ahead. Please continue.

BY MR. COHEN:
Q Is he sitting in front of the railing or behind the railing?
THE COURT: Mr. Cohen, I think it is adequate from her description. Would you continue, please?
THE WITNESS: Okay.

BY MR. COHEN:
Q Would you please tell us, did you have a conversation with him?
A Yes.
Q And would you tell us please what you said and what he said?
MR. CRIMI: I have a continuing objection.
THE COURT: Yes.
THE WITNESS: He said you went to Canada and I said "Yes", and we were talking other things and I asked him if he knew anyone could help Keith and he says no, but he

would find out.

BY MR. COHEN:

Q. Did you have any other conversations with Mr. Pryce?

A. Yes.

Q. And when was that?

A. The other week he come back to me and said he find someone who could help Keith, but it would cost me $300.

Q. And what did you say?

A. I said, "Okay, Keith doesn't have the $300", but I would find the rest.

Q. Did you have any other conversations with Mr. Pryce relating to this subject?

A. Well, he said, - he came back, - he phoned one day and asked me for Keith height and Keith age.

Q. And when was this?

A. It was on a Wednesday. I don't really remember the day. Either a Wednesday or a Thursday, sometime like that. I know it wasn't a Monday.

Q. And what did you say?

A. I give him the description and he said "Okay".

Q. Did you have any other conversations prior to October 1, 1973 relating to this matter?

A. He came back the Sunday and asked me for Keith address and Keith phone number in Canada.

Q Did you ever relate the substance of any of these conversations to anyone else?

A No.

Q Did you ever have any conversations between September 14th and October 1st with Keith Grizzle?

A Yes. I told him that Junior get someone to sponsor him.

Q And when did you do that?

A I guess it was the same evening he told me that he find someone I phoned Keith and told him.

Q I notice that you use the word "sponsor".

MR. CRIMI: I didn't notice that at all.

THE COURT: I didn't notice that at all, Mr. Cohen.

MR. CRIMI: And I object to putting words in the witness's mouth.

THE COURT: All right. I sustain the objection. You ask the witness, please. Go ahead Mr. Cohen. I don't know what that means. It is out of the blue.

THE WITNESS: "Sponsor" mean helping to get somebody to help me, his sponsor.

MR. CRIMI: I object.

THE COURT: Strike that. There is no question, Mrs. Pryce. You wait until there is a

question. You ask the question, Mr. Cohen, and please do not lead. Go ahead.

MR. COHEN: I would like the witness' testimony, response to my last question read back to me for the jury.

THE COURT: I have stricken it.

MR. COHEN: I mean the last question that wasn't stricken.

THE COURT: No. I think you can continue. We were up to the point where Mrs. Pryce had had a conversation with Keith.

BY MR. COHEN:

Q Could you tell us what you said and what he said, please?

A I told him that Junior get someone to help him.

THE COURT: Go ahead, Mr. Cohen.

THE WITNESS: So he said, "Okay", nothing more.

BY MR. COHEN:

Q Did you have any further conversation with Keith Grizzle prior to October 1, 1973?

A I called him Sunday after Junior came for the address and phone number and told him somebody would be coming for him on Monday.

Q Did you tell him who?

A No, because I didn't know who it was.

Q Directing your attention to October 1, 1973 at about 9:00 p.m., could you tell us what happened?

A. I get a collect call from Buffalo from one Junior Price.

Q And who was the call, in fact, from?

MR. CRIMI: I object to this.

THE WITNESS: Junior Price.

MR. CRIMI: Unless there is some foundation made.

THE COURT: This is October 1st at 9:00 p.m.?

MR. CRIMI: That is also after.

THE COURT: That is after. All right, I will sustain the objection.

MR. COHEN: Your Honor - -

THE COURT: Mr. Cohen, please. Mr. Cohen, if you want to make an argument about it, I will listen to it, but only out of the jury's presence. Ladies and gentlemen, evidently, there is a point that Mr. Cohen wants to make with me on the law. I will ask you to step into the corridor for a minute so I can hear the argument.

(Jury escorted from the courtroom.)

THE COURT: On October 1, 1973, you were at your

home in Rochester, New York?

THE WITNESS: Yes.

THE COURT: All right. At that time you received a telephone call from someone?

THE WITNESS: Yes.

THE COURT: I suppose that the witness could identify the voice of Carol Pryce, but it seems to me that there is a more serious problem and that is this is after the arrest of the conspirators here.

MR. COHEN: Your Honor, the - -

THE COURT: The conspiracy had terminated.

MR. COHEN: Your Honor, first of all, there is nothing to show that Mr. Pryce knew the end of the, - the termination of the conspiracy. In addition, the indictment does read on or about October 1, 1973. In addition, the conversation is extremely relevant because it shows guilty knowledge on the part of the defendant and it has the equivalent of being a declaration against interest.

THE COURT: What do you expect? Was it Carol Pryce on the phone?

THE WITNESS: Yes.

THE COURT: No question about that?

THE WITNESS: No.

THE COURT: What did he say?

THE WITNESS: He said, "Monica, it is me, Junior, they don't come as yet." I said, "No."

THE COURT: "Monica, this is - -"

THE WITNESS" "Junior".

THE COURT: "Junior"?

THE WITNESS: "They don't come as yet."

THE COURT: "They don't come as yet", all right, and what did you say?

THE WITNESS: I said, "No".

THE COURT: What did he say?

THE WITNESS: He said "Maybe they are lost. I will see you when I come".

THE COURT: All right. Mr. Crimi.

MR. CRIMI: Your Honor, I had a two-pronged objection. The first objection was there was no proper foundation as of that point as to her ability to recognize the voice. I know that this is hypertechnical, but it is there, and secondly, regardless of what the indictment says as to the date, I think that the facts are established here that at about 7:00 o'clock, I

believe, on the evening of October 1st, that there was, - these individuals were stopped at the bridge and were effectively,- their freedom was effectively detained so that there was an arrest at that particular time; that therefore, the conspiracy, I believe, ended. Any conversations of coconspirators after the ending of the conspiracy would seem to me to be inadmissible.

MR. COHEN: I would like - -

THE COURT: Mr. Cohen.

MR. COHEN: At that time, Mr. Pryce was not arrested. He was free to act in furtherance of the conspiracy or in any event, I don't think that is completely relevant because it would be as if, - it would be a license for Mr. Pryce to go about in the community and recognize and admit his involvement in the conspiracy and be free from anyone testifying about his statements because the conspiracy is over. That is not true. It is tradition. There has always been a common law rule to admit these statements as declarations

against interest and it shows knowledge, guilty knowledge on the part of the defendant.

THE COURT: Mr. Crimi, in the ordinary case, let us say you have a conspiracy, any conspiracy; maybe we are shortcutting something here. If it is a situation where the conspirator is arrested, at that time his statements to officers about the activities of others in the conspiracy is not admissible.

MR. CRIMI: That's right, your Honor.

THE COURT: I think that probably one of the reasons for that is that in order to save his own skin, he might be willing to deliver up other heads on the police blotter, right?

MR CRIMI: Right.

THE COURT: We do not have that situation here, though. Why shouldn't, under the circumstances here, under general rules of evidence and fairness, why shouldn't what Mr. Pryce said here, evidently, from the tone of the conversation, he didn't know, even if it would be a good rule, - he

isn't talking to a police officer. He is talking to a fellow member, for our discussion purposes here, - a fellow member of the conspiracy and it would appear that there would be, - why shouldn't we hear this in evidence?

MR. CRIMI: Well, because - -

THE COURT: Besides this just sort of formal rule of saying "Well, the conspiracy ended, Judge, and therefore, we ought not to hear about it".

MR. CRIMI: I think what the reason we should not, - it should not be admitted, as I said, my objection was originally was to technicality of the recognition factor and secondly, what we have here is I don't think it makes any difference whether Carol Pryce knew that the conspiracy ended. The fact remains that the conspiracy did end and now what you have is the statement of a co-conspirator to another co-conspirator after the conspiracy is ended and - -

THE COURT: What if there was no conspiracy involved at all? What if this was a

straight out substantive crime of stealing money from the bank or something and the robbery occurred at 6:00 o'clock at night and at 9:00 o'clock at night Mr. Pryce called another individual, whether the other individual was a co-bank robber or not and said something along, you know, "Well, I have the loot here in my house", or "Did you get any calls from the police yet", or "Did you see Tom Smith who was also there with us at the bank, anything like that", that would be admissible, wouldn't it?

MR. CRIMI: Yes.

THE COURT: Then why should we have a different rule here simply because we have the label conspiracy on one of the counts?

MR. CRIMI: Well, I don't know other than to say that it would appear to me that the fact that they are in a conspiracy and the conspiracy is ended that the general rule would be that you can't use the statements. Now, I think what your Honor is saying that you can use the statement against the declarant of it

and not against the others in the conspiracy.

THE COURT: All right. If there were others here, then we would have a different problem, if we had Keith Grizzle and the princess and the others as defendants here.

MR. CRIMI: Yes.

THE COURT: I think it ought to be admitted. Have the jury come back, please, Mr. White.

(Jury returns to the courtroom.)

THE COURT: All right, Mr. Cohen.

MR. COHEN: Thank you, your Honor.

THE COURT: Mr. Crimi, you can come over here again. Keep your voice up, please.

BY MR. COHEN:

Q Mrs. Pryce, directing your attention to October 1, 1973 about 9:00 p.m., could you tell us what happened?

A I got a phone call from - -

Q Now, would you just stop right there. Did you recognize the, - did you recognize the voice on the other end?

A. Yes.

Q. And how did you recognize the voice? Had you ever heard it before?

A. Yes.

Q. And whose voice was it?

A. It was Junior's voice.

Q. Could you tell us what happened, please?

A. He phoned me and asked me if they didn't come as yet. I said, "No". He said "I don't know what happened. Maybe they are lost. I will see you when I come".

Q. Do you know from where the phone call was made?

A. Yes, it was from Buffalo.

Q. How do you know that?

A. It was a collect call and the operator say a collect call from Buffalo. I asked Junior where he was calling from and he told me and he told me he was in Buffalo.

Q. Directing your attention to again on October 1, 1973, but this time 11:00 o'clock at night, could you tell us, please, what happened?

A. Junior came over to my apartment and he asked me if they didn't come as yet and I said "No", and he said "What could have happened to them, maybe they are lost", and then he left and went and the next morning he called me and say - -

Q. Excuse me. Did you have any, - you indicated, - could

you tell us who Junior meant by "them"?

A. Keith and - -

MR. CRIMI: I object to what Junior meant.

THE COURT: I will sustain the objection to what he meant.

BY MR. COHEN:

Q. Could you tell us what you understood Junior to mean by the word "them"?

MR. CRIMI: I object. That is an operation of the mind.

THE COURT: Did you have any discussion further about, - between you and he on either of these phone calls, 9:00 o'clock or 11:00 o'clock?

THE WITNESS: No.

THE COURT: All right. I will sustain the objection. The jury can make conclusions. It is up to them.

BY MR. COHEN:

Q. Did you have any further conversations with Mr. Pryce about this matter?

A. Not until the next day.

Q. Could you, - and when did you have the conversation?

A. It was in the morning. He calls me and says "They arrest Keith and Killo".

Q. Have you ever met an individual by the name of Killo?

A. Yes.

MR. CRIMI: I am sorry. What is the name of this individual?

MR. COHEN: Killo.

THE COURT: How do you spell that?

THE WITNESS: K-i-l-l-o.

BY MR. COHEN:

Q. How did you come to meet him?

A. He came over with Junior to his sister's house one evening and Junior introduced me to him and said, "Monica - -"

Q. When was that?

A. That is before we have the argument about Keith, because I didn't leave for Canada yet.

MR. CRIMI: Excuse me.

THE COURT: Excuse me. Who is Killo? Is that his real name?

THE WITNESS: That is Leroy Cephas.

THE COURT: That is the name that he uses, Killo?

THE WITNESS: Yes.

THE COURT: Leroy Cephas?

THE WITNESS: Yes.

THE COURT: All right. Go ahead, Mr. Cohen.

BY MR. COHEN:

Q You indicated that, - did you have any conversation with, - would you tell us where you were when you met this individual whose name is Killo?

A I was over at Avenue A at Junior's sister's apartment.

Q And who was present?

A His sister was there and Junior and Killo was there.

Q And did Mr. Pryce say anything to you?

A Well, we went outside because he was washing his car.

THE COURT: Excuse me. When was this?

THE WITNESS: I don't remember the date, but it was before all these things occurred.

THE COURT: Was it in September of 1973?

THE WITNESS: Yes, around there.

THE COURT: Sometime in September of 1973?

THE WITNESS: Yes.

THE COURT: All right. Go ahead, Mr. Cohen. He was washing his car?

THE WITNESS: Yes.

THE COURT: And then what happened?

THE WITNESS: He said, "Monica, this is Killo, don't you remember him", and I said, "No", and we were talking and he was telling me "You remember my father and my cousin", and we were talking about

Jamaica. That was all.

BY MR. COHEN:

Q All right. Could you describe this individual known as Killo?

MR. CRIMI: I am going to object. I don't know what is the materiality.

THE COURT: I will permit that. Overruled. Maybe there is a point. His age and height, if you can tell us, about how old?

THE WITNESS: I don't know. I would say he is about twenty or so, slim, dark, not bad looking is all I can say about him.

THE COURT: Next question, please, Mr. Cohen.

BY MR. COHEN:

Q Did there come a time when you knew him by a different name?

A Yes.

Q And when was that?

A On the day after they arrested him he phoned me from Buffalo.

Q And how did you learn, - and what was the name you came to know him by?

MR. CRIMI: I am going to object to the conversa-

tions now at this point. Have you asked what time the phone call came in?

THE COURT: This was the - -

MR. COHEN: The day after.

THE COURT: The day after the 1st?

THE WITNESS: Yes.

THE COURT: Mr. Cephas called you from Buffalo?

THE WITNESS: Yes.

BY MR. COHEN:

Q Is that when you - -

THE COURT: Excuse me, Mr. Cohen. So I understand this, I think I better have the jury step out. Ladies and gentlemen, will you step in the corridor, please?

(Jury escorted from the courtroom.)

MR. COHEN: Your Honor, I would like to withdraw the question.

THE COURT: You withdraw the question?

MR. COHEN: Yes.

THE COURT: Is there anything else then after this?

MR. COHEN: No, your Honor. I have about three - -

THE COURT: So that we do not have to have the jury go out again.

MR. CRIMI: Are there any other questions?

THE COURT: What else do you want to ask Mrs. Pryce?

MR. COHEN: I would like to ask her if she has heard these questions before and I would like to ask her if she has been promised anything?

THE COURT: If she has been what?

MR. COHEN: Promised anything.

THE COURT: Those are sort of cross examination questions. Mr. Cohen, I don't think it is proper. You like to ask the witness this question which lawyers do. Mr. Crimi does. You were telling the truth here, aren't you?

MR. COHEN: I am not asking her. We went through that yesterday.

THE COURT: Of course she always answers "yes, I am telling the truth", and it is just another line or two in the record and I don't think it helps. All right. Mr. Crimi, after this, are you going to need a break for cross examination or before

cross examination?

MR. CRUMI: Well, I could use a break of ten or fifteen minutes.

THE COURT: This almost completes your examination?

MR. COHEN: Your Honor, this completes it. I will withdraw those questions. I will not ask those questions.

THE COURT: You will have a chance for redirect anyway. Mr. White, will you tell the jury to go downstairs and we will come back again at 11:00 and resume. All right, we will be in recess.

(Recess taken at 10:46 a.m.)

* * * * * * * * *

PROCEEDINGS: October 31, 1974, 11:00 a.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury present.)

THE COURT: All right. Would you have Mrs.

Pryce retake the stand, Mr. Cohen.

M O N I C A P R Y C E, a witness called by and in behalf of the Government, having been previously duly sworn, resumed the witness stand and testified further as follows:

THE COURT: Mr. Cohen.

MR. COHEN: Thank you very much, Mrs. Pryce. I have no further questions.

THE COURT: Mr. Crimi.

RECROSS EXAMINATION BY MR. CRIMI:

Q Mrs. Pryce, do you know when Mr. Grizzle arrived in Canada?

A Yes.

Q When was that?

A The 14th of September, 1973.

Q Okay, and Mrs. Grizzle, - I am sorry, Mrs. Pryce, did you learn that from correspondence with him or how?

A His sister called me and told me he was coming.

Q Did he call you from Jamaica?

A His sister called me from Canada.

Q I am sorry. His sister called you from Canada?

A Yes.

Q Did she call you before or after he came to Canada?

A. Before he came to Canada.

Q. I see. Now, had you been corresponding with him while he was in Jamaica before he came?

A. Of course.

Q. And did you correspond with him on a daily basis or a weekly basis or a monthly basis or how often?

A. What do you mean, by phone or by mail?

Q. By mail.

A. I write him every week.

Q. All right. Did you also correspond with him by phone?

A. Yes.

Q. Okay. Did that, - you did that on a weekly basis or a monthly basis or what?

A. Whenever I feel like it, because any day of the week when I feel like calling, I call.

Q. Now, you left Jamaica on June, - in June of 1973, is that correct?

A. Yes.

Q. And in any of this correspondence or either by telephone or letter did Mr. Grizzle communicate, inform you that he would like to get into the United States?

A. No.

Q. No. That was never discussed?

A. No.

Q. Was that ever discussed at all while you were in

Jamaica with Mr. Grizzle?

A. Yes.

Q. But not during the period from June to September?

A. No.

Q. Is that correct?

A. Yes.

Q. All right. Now, when did you go up to see him? What was the date that you went up to see him in Canada?

A. The 14th, the same day he arrived I went there.

Q. All right, and at that time was there a discussion about the possibility of him getting in?

A. Yes.

Q. And he asked you to try to get somebody to help him, is that right?

A. Yes.

Q. And how long did you stay in Canada?

A. Two days.

Q. Two days, so I take it you returned to Rochester, New York, is that right, by the 16th?

A. Yes.

Q. Now, prior to this time, - now I am talking about prior to September 14th or the 16th, had you met this individual by the name of Killo?

A. Repeat the question, please.

Q. All right. Well, let me ask it to you in another way.

Do you recall when you met this individual by the name of Killo?

A. Yes.

Q. And when was that?

A. In September.

Q. All right. Now we have got him in September. I wonder if I could impose upon you to tell whether that was before you went to Canada?

A. Before I went to Canada.

Q. So it was, therefore, before September 14th?

A. Yes.

Q. Now, as I understand your testimony, you had a conversation with this Killo, is that correct?

A. Yes.

Q. And this conversation took place in the driveway, - Strike that out. This conversation took place outside where Mr. Pryce was washing his car, is that correct?

A. Yes.

Q. And was this in a driveway or on the street or what?

A. A driveway.

Q. A driveway, and where was this driveway located?

A. At his sister's house.

Q. Pardon?

A. His sister's house, 216 Avenue A.

Q. Where does his sister live?

A. 216 Avenue A.

Q. Is that near where you live?

A. Next door.

Q. So you are a next door neighbor, at that time, at least, to Mr. Pryce's sister, is that correct?

A. Yes.

Q. Okay. Now, you heard Mr. - -

THE COURT: Excuse me. In case her name should come up again, what is her name, please?

THE WITNESS: His sister's name?

THE COURT: Yes.

THE WITNESS: Mrs. Jo Ann Simpson.

THE COURT: John Simpson?

THE WITNESS: Jo Ann Simpson.

MR. CRIMI: Jo Ann.

THE COURT: Jo Ann Simpson.

BY MR. CRIMI:

Q. Okay. Well, you had an opportunity to talk to this Killo, is that correct?

A. Yes.

Q. And you heard his voice on some several occasions at that particular time? In other words, there was a conversation in the driveway with this Killo, is that correct?

A. Yes.

Q So you were able to recognize the voice, is that correct?

A Yes.

Q And I think you testified that subsequently, you received, - and I don't want you to get into the conversation, - but you received a phone call and you said it was Killo's voice that you heard, is that correct?

A I didn't say that because I didn't get to ask that question.

Q You weren't asked that question?

A No.

Q Well, was that voice you heard where you heard the voice of Leroy Cephas, was that the same voice as Killo's?

A Yes.

Q Of course.

A Junior's voice is different from Killo's voice.

Q But you recognized it as Killo's voice?

A Yes.

Q But this fellow Killo or Leroy Cephas was without any doubt in the City of Rochester on September, - between the 1st and the 14th of September of 1973, is that right?

A Yes.

Q. Okay. When you returned from Toronto, you went to your apartment at 210 Avenue A, is that correct?

A. Yes.

Q. And you were living there alone, as I understand it.

A. Yes.

Q. And you had been in the United States for two, three months, is that correct?

A. Yes.

Q. All right. I am just trying to get some answers from you, Mrs. Pryce. In relation to the time that you returned to your apartment, when was it that you saw Mr. Pryce, Mr. Carol Pryce?

A. One day in the week.

Q. One day during the week?

A. Yes.

Q. And how did that come about?

A. When he came to visit his sister all the time and I was there and we was talking.

Q. Did you go from your apartment to his sister's apartment?

A. Yes.

Q. And you saw him?

A. Yes.

Q. And you asked him a certain question concerning about help in getting somebody from Canada?

A. Yes.

Q You started the conversation?

A Yes, I asked him.

Q Tell us exactly what you said to him?

A After getting into the conversation, I just told him "What about helping Keith".

Q Well, you might have been talking about a lot of things.

A I just asked him.

Q You asked him something in relation to Keith Grizzle, is that correct?

A Yes.

Q That is what we are trying to find out in this case. What did you ask him about Keith Grizzle.

A I ask him if he knew anyone could help him.

Q All right. Now, and he responded that he did not know at that time, is that correct?

A Yes.

Q Did you tell him that you were anxious to have Keith come to the United States?

A Yes, I told him that.

Q Mr. Pryce?

A Yes.

Q Did you tell him why you wanted him to come to the United States?

A Do I have to tell you that?

THE COURT: Did you tell him?

THE WITNESS: Yes. We were talking.

THE COURT: Talk to the jury, please, Mrs. Pryce.

THE WITNESS: Yes. I told him that Keith couldn't keep any good health in Jamaica, the place is too hot and I would like him to come and help himself.

BY MR. CRIMI:

Q And you told him, - did you tell him that the economic situation was difficult for Keith in Jamaica? Did you tell him that?

A Repeat what you said.

Q Well, I don't want to put words in your mouth. Did you tell him why you wanted to help Keith?

A I told you what I told him. Yes, I told him what I tell you.

Q I am sorry. I didn't understand what you said.

A I told you that Keith couldn't keep any good health in Jamaica.

Q Okay. In words or substance, you told him you were anxious to get Keith to come to the United States, isn't that correct, Mrs. Pryce?

A Yes.

Q I am not trying to be difficult at all.

Q You are giving me a hard time.

THE COURT: Mrs. Pryce, do you want to take a recess?

THE WITNESS: I just want to get this thing over with.

THE COURT: Mrs. Pryce, it won't be much longer. This is an important matter and Mr. Crimi is entitled to ask questions. You have been answering the questions, I know, to the best of your ability and will continue to do so and it is important that Mr. Crimi be able to ask questions and that you give him answers just as well as you can. All right, Mr. Crimi.

BY MR. CRIMI:

Q Thank you. Now, subsequent to this conversation, you, I believe, testified that you had another conversation concerning Mr. Grizzle with Mr. Pryce, is that correct?

A Yes.

Q Now, do the best you can. How long after the first conversation was that?

A I didn't keep check on the date, but a couple days after. I don't know.

Q And where did that conversation take place?

A. In my apartment.
Q. In your apartment?
A. Yes.
Q. Okay, and did he come to see you to talk about this or - -
A. Yes.
Q. And what did he say at that time?
A. He said he found someone could help Keith, but it would cost me $300.
Q. Now, did he tell you who that someone was that could help you?
A. Not at the present time.
Q. Not at that time?
A. No.
Q. When did he tell you about it?
A. It was the Sunday he came for the address and the phone number. He said it was Killo.
Q. All right. So that before the Sunday, - was it a Sunday that he came for the address?
A. Yes, because he was going on Monday.
Q. All right, and on the Sunday he told you that it was Leroy Cephas?
A. Yes.
Q. That was going to help you, is that correct?
A. Yes.

Q. Now, let me ask you, I think in direct examination you used the word "argument" and it wasn't explained, but as I understand it "argument" in Jamaican language means "conversation"?

A. Yes.

Q. It is not the same as in English where we mean people are fighting, so it isn't, - if you testified you had an argument, you meant you had a conversation?

A. Yes.

Q. Okay. Mrs. Grizzle, did you know, - you say there was a conversation as to money, is that correct?

A. Yes.

Q. And were you told who was going to get this money?

A. No, he didn't tell me.

Q. He didn't tell you?

A. No.

Q. Are you sure about that?

A. Of course.

Q. All right, and did you, - when you came into the United States, which is June 30th, - was it June 30, 1973?

A. Yes.

Q. Where did you go to live?

A. At his mother's house. I stopped there for two nights and then I moved to 210 Avenue A.

Q Did you ever live at 10 Dudley Street?
A No.
Q Never did?
A No.
Q Positive about it?
A Of course.
Q All right. Now, Mrs. Pryce, you were called, were you not, to give a statement to the Federal Investigators in this case?
A Yes.
Q And you were, - you did give a statement?
A Yes.
Q On or about November 10, 1973, - in November?
A Yes.
Q Mr. Devine, - Mr. Devine was the person, - do you know Mr. Devine?
A Yes.
Q He was the one that took it?
A Yes.
Q Did you swear to tell the truth in that statement?
A Yes.
MR. CRIMI: I am reading from Court Exhibit 8, your Honor, which is a record of a sworn statement.
THE COURT: Is that the original, Mr. Crimi?

MR. CRIMI: Well, no, I guess he has got the original.

THE COURT: This is a statement of the witness, no question about that?

MR. CRIMI: Yes.

MR. COHEN: Do you want to see it?

THE COURT: Do you want the original? Mr. White has the original, Mr. Crimi, so there is no question about it. Is it signed?

THE CLERK: It is a photocopy.

THE COURT: You did give a statement. Mr. Crimi is going to ask you some questions which were contained in the statement. Go ahead, Mr. Crimi. Mr. Cohen, it seems to me, Mr. Crimi and Mr. Cohen, the best one to use is the signed original if we have that. It is not necessary, but if there is a question, and sometimes there is a question in the witness' mind. You may proceed, Mr. Crimi.

MR. CRIMI: Your Honor, this is a sworn, - it is not, - all right.

THE COURT: Go ahead.

BY MR. CRIMI:

Q. Do you recall being asked questions by Mr. Devine on November 10th?

A. I don't remember the date.

Q. But you do recall being asked questions about this case?

A. Yes.

Q. All right, and was this question asked of you, "Question: Mrs. Pryce, since your entry in the United States on June 30, 1973, where have you resided? Answer: 10 Dudley Street". Was that question asked of you and was that answer true?

A. I told him I wasn't living there.

Q. You told him you weren't living there?

A. I told him, yes, I was living at 10 Dudley Street, but I didn't live there.

THE COURT: So there is no confusion, Mr. Cohen, I understand this but I want to be sure the jury understands it. Mrs. Pryce made a statement. It was typed by Mr. Devine or someone working with him and do you have a signed original? Did she sign the statement? Did you sign the statement, Mrs. Pryce?

MR. CRIMI: No, but there is a question here.

THE COURT: I know that, Mr. Crimi, but I want

to make sure the witness understands what we are doing. After Mr. Devine asked you the questions, did you sign the paper?

THE WITNESS: No.

THE COURT: Is it indicated that it is signed, Mr. Crimi?

MR. CRIMI: It doesn't indicate it is signed, your Honor, but it indicates it was a sworn statement.

THE COURT: All right.

MR. CRIMI: The question is "Do you swear to the statements", and then it says it is a true recording.

THE COURT: It is recorded?

MR. CRIMI: Apparently, it is recorded. Let me read the certification if the Court wants.

THE COURT: All right, read the certification.

MR. CRIMI: "I certify that the foregoing statement consisted of eleven", spelled out, and then eleven in parentheses and numerically, "pages is a true and correct transcription of an edison voice record in this matter", and it is signed by Elizabeth A. Sweitzer, Clerk Stenographer.

THE COURT: All right. So what this is, Mrs. Pryce, is that Mr. Devine asked you some questions and you gave some answers and during that period of time, that recording was made on a machine of the questions given and the answers given. Then later on, one of the employees of the Immigration Service typed up from the record, made a typed transcript and she certifies now that what she heard on the machine, she has typed here on the paper and she certifies that it is accurate. Very well. You may continue, Mr. Crimi.

BY MR. CRIMI:

Q Okay. One of the questions asked you was, "Mrs. Pryce, since your entry in the United States on June 30, 1973, where have you resided", and the answer says "10 Dudley Street". Now, was that answer of yours true or false at the time that you made it?

A It wasn't true.

Q It was not true?

A No.

Q And the next question "How long did you remain at 10 Dudley Street? Answer: About a month". Was that

answer true or false when you made it?

A. It wasn't true.

Q. It wasn't true. Next question on Page 3, "Question: With whom did you reside? Answer: Carol Pryce." Was that true or false?

A. That was false. That was what they told me to say when I came here.

THE COURT: Even though Mr. Crimi is close to you, if you want to look at the paper while Mr. Crimi asks you the questions that is why he is standing there, but it is important that you keep your voice up so that the jury can hear what you say. Mr. Crimi, will you repeat the question and answer, please?

BY MR. CRIMI:

Q. Yes. The question was "With whom did you reside? Answer: Carol Pryce". Was that answer true or false when you gave that?

A. It wasn't true.

Q. It was not true. All right. Now, further down on the paper, it says, "Question: When did you move from - -" No. I am sorry. "After one month at Dudley Street, did you move? Answer: Yes. It was at

210 Avenue A." Was that true or false?

A. It isn't true.

Q. It isn't true. Now, when you gave the statement, do you recall giving it in front of Mr. Devine, is that correct?

A. Yes.

Q. And you recall this question, "Do you swear that all the statements you are about to make will be the truth, the whole truth and nothing by the truth, so help you God", and the answer was "Yes".

A. Yes. I didn't swear on a Bible.

Q. Pardon?

A. I didn't swear on a Bible.

Q. You didn't swear on a Bible, but you answered "Yes" to that question, is that correct?

A. Yes. It was what I was told to say. I just come in and they told me what to say.

THE COURT: Mrs. Pryce, whatever you say you have to make sure the jury hears you.

THE WITNESS: That is what they told me to say when I went in because I just came in and if I don't say it right, I must go to jail, so what am I to say.

BY MR. CRIMI:

Q All right. The answers were not true, is that correct?

A No.

Q All right. Now, you also testified before a grand jury, is that correct? Do you remember that?

A Yes.

Q All right. That was January 8th? Who has the original of that, - 1974.

THE COURT: Mr. Cohen.

MR. COHEN: Your Honor, I believe there are two originals. The Court has one and I have one.

THE COURT: Do you have that, Mr. White?

MR. CRIMI: Two originals? I have Exhibit 7. I am sorry.

MR. COHEN: That would be Court Exhibit Number 7.

BY MR. CRIMI:

Q Now, I think you testified that nothing was ever said as to who was going to get the money, is that correct, just fifteen minutes ago when I was asking you? Did you testify to that? Mrs. Pryce, would you answer my question? Was there any conversation between you and Mr. Carol Pryce as to who was going to get the money?

THE COURT: Mrs. Pryce, do you want to take a recess?

THE WITNESS: Yes.

* * *

M O N I C A P R Y C E, a witness called by and in behalf of the Government, having been previously duly sworn, resumed the witness stand and testified further as follows:

CROSS EXAMINATION BY MR. CRIMI (Resumed):

THE COURT: All right, Mr. Crimi, when you are ready.

BY MR. CRIMI:

Q Mrs. Pryce, during any of your conversations with Mr. Carol Pryce, did he tell you who was going to get this money that you were talking about?

A No.

Q You are sure about that?

A Yes.

Q Mrs. Pryce, do you remember coming into this building andtestifying before the grand jury?

A Yes.

Q And do you recall Mr. Cohen being there asking you questions, - Mr. Cohen being this individual?

A Yes.

Q Okay. Would I be correct in saying that that was sometime in January, 1974?

A Yes.

Q Do you recall being asked this question, - if you want

to read this, I will have it available for you, - It concerns the conversation that you had with Mr. Pryce and the question, - I might as well give it to you also. He asked you this question, "Let me go over the sequence a few days after you visited Keith you had a conversation with Mr. Pryce in which you mentioned a sponsorship and that you had another conversation when he came back to you, correct?"

A. Yes.

Q. And "Answer: Yes, he said he had someone could help Keith".

A. Yes.

Q. Do you remember those questions and answers?

A. Yes.

Q. "Did he mention price, the exact amount it would cost at the time?", and the answer "Yes. He said it would cost me $300."

A. Yes.

Q. Incidentally, Mr. Cohen, I am reading from Page 13 of Exhibit 7. "Question: And what did you say? Answer: I said yes. I said Keith have a hundred fifty and he would give it and I would pay the rest", you said that?

A. Yes.

Q. "Question: Then what did he say? Answer: He said

well, that was okay and he leave", is that the question and answer?

A. Yes.

Q. "Question: He said it was okay and he would have to check it out."

A. Yes.

Q. "Answer: Well, he say either when he told me about $300 he checked that out. You see, it is so complicated because sometimes he came in the evening because sister living next door. I don't remember which day, but I know we talk about it."

A. Yes.

Q. You remember giving that answer to that question?

A. Yes.

Q. All right. "Question: In person? Answer: In person. The only conversation on the phone was his age. Question: Oh, I see. When was that? Answer", -you didn't answer, - "No response" it says. I am reading this for background, okay?

A. Yes.

Q. "Question: Was that just before they were to pick up Keith? Answer: The week before. I don't remember which day, but on Sunday he came for the address for Keith was living in Canada and I give it to him on a piece of paper".

A. Yes.

Q Now, listen to this, the answer to this question, "I say did he ever tell you to whom you were supposed to pay the money? Answer: Yes, he say it was his friend Leroy". Now - -

A. I said that.

Q. Pardon?

A. I said it.

Q. You said that?

A. Yes.

Q. Was that true or is it true what you say today that he never talked about who was going to get the money? Whichis the truth is all I want to know.

A. He did not discuss who was to get the money.

Q. I am sorry, I didn't hear you.

A. He did not tell me who was going to get the money.

Q. He did not tell you?

A. No.

Q. So in front of the grand jury, you lied then?

A. Yes.

Q. Now, I just have a few more questions for you, Mrs. Pryce. At any time that you were, from the time you gave both of those statements, did you talk to Mr. Devine about what they were going to do concerning you?

A. No.

Q No. You were not indicted in this case, were you?
A No.
Q You have not been arrested?
A No.
Q And did they tell you that you were listed as a co-conspirator in this indictment?
A I don't remember.
Q You don't remember that?
A No.
Q They didn't tell you that they were not going to indict you at all, they are not going to do anything to you?
A No.
Q No. Made no promises whatsoever?
A No.
Q How about as far as Keith is concerned?
A No.
Q They made no promises to him at all?
A I don't know.
Q You don't know. Did they tell you that if you didn't testify that it would go hard on Keith?
A No, they didn't tell me that.
Q They didn't tell you that?
A But I know I have to tell the truth.
Q They didn't tell you?
A No.

Q They just told you to tell the truth?

A Yes.

Q Did they have any doubts about you telling the truth?

A I don't know.

Q You don't know. Now, you are presently living with Mr. Grizzle in Rochester, is that correct?

A Yes.

Q And do you know, - and you have been living there with him at what is the address, 210 Avenue A yet?

A Yes, and then I went to 17 and now I am at Clifford Avenue.

Q Now you are on Clifford?

A Yes.

MR. CRIMI: May I just have a moment, your Honor?

THE COURT: Surely.

MR. CRIMI: I have no further questions. Thank you very much, Mrs. Pryce.

THE COURT: Mr. Cohen, anything further?

REDIRECT EXAMINATION BY MR. COHEN:

Q When Mr. Devine came to talk to you, did he tell you who he was?

A Yes.

Q And is there a reason you told him you resided at 10

Dudley Street with Carol Pryce?

MR. CRIMI: I am going to object to that question, your Honor.

THE COURT: The reason, - yes, I will sustain the objection.

BY MR. COHEN:

Q Excuse me, your Honor. You indicated to Mr. Devine that you resided at 10 Dudley?

A. Yes.

Q And with Carol Pryce?

A. Yes.

Q You also indicated that someone told you to say that.

MR. CRIMI: I object to that. I don't remember that indication at all.

THE COURT: I will sustain the objection. Strike the inference and the question from your mind, ladies and gentlemen.

BY MR. COHEN:

Q Did you have any conversations with anybody about answering questions from the Immigration Service?

A. Yes.

Q And with whom did you have the conversation?

A. I have it with Junior and I have it with his brother Barry.

THE COURT: Before we go any further, I think it is best, ladies and gentlemen, if you stepped into the corridor again, please. These are complicated questions. They seem simple, but sometimes it is complicated.

(Jury escorted from the courtroom.)

THE COURT: When was that statement given to Mr. Devine?

MR. COHEN: It was November 10th, your Honor.

THE COURT: You said that you talked to Mr. Carol Pryce and Barrington?

THE WITNESS: Yes.

THE COURT: Was that before you talked to Mr. Devine?

THE WITNESS: Yes.

THE COURT: Where did you talk to them, in Rochester?

THE WITNESS: Yes.

THE COURT: In Rochester?

THE WITNESS: Yes.

THE COURT: What did Carol Pryce say to you?

THE WITNESS: He came and he say if the Immigration

should ask me if I ever live with him, I must tell him yes.

THE COURT: I see, all right.

THE WITNESS: Because they say if I don't tell them that they would know that I just got married to come here and they would send me home and arrest me.

THE COURT: They would say that you just got married?

THE WITNESS: Just to come here and they know I wouldn't be living with him as man and wife.

THE COURT: They would say that it is just a common law marriage?

THE WITNESS: Yes, just to get into the country.

THE COURT: Just to get into the country?

THE WITNESS: Yes.

THE COURT: What else did he say?

THE WITNESS: He said when Immigration, whatever they ask me, I must say yes, definitely I live with Junior and if they ask me how long to tell them about a month or so.

THE COURT: Tell them about what?

THE WITNESS: A month or so.

THE COURT: Among ourselves?

THE WITNESS: A month or so.

MR. COHEN: A month or so, your Honor.

THE COURT: Oh, a month or so, that you lived with him a month or so?

THE WITNESS: Yes.

THE COURT: You testified before that you did not live with Carol Pryce?

THE WITNESS: No.

THE COURT: That you say is the truth?

THE WITNESS: Yes, that was the truth, I never live with him.

THE COURT: That you never lived with him. Was Barrington there with Carol at the same time?

THE WITNESS: No.

THE COURT: He wasn't?

THE WITNESS: No.

MR. CRIMI: I don't know whether she understood. Were you talking about at the time the conversation was had?

THE WITNESS: Yes, when they tell me what to say, is that what you mean?

THE COURT: Yes.

THE WITNESS: No.

THE COURT: He wasn't there?

THE WITNESS: No.

THE COURT: When did you talk to Barrington?

THE WITNESS: It was just coming into the country that time. They didn't arrest Keith yet.

THE COURT: Did you talk to Barrington between October 1st and the time you talked to Mr. Devine?

THE WITNESS: No. Like I say, Barry, Barry, Barry, - no, because I don't see him that often.

THE COURT: All right, very well, so all we are concerned with then, - in other words, the time period that we are involved with now is after October 1st and before you talked to Mr. Devine, right?

THE WITNESS: Yes.

THE COURT: Okay. Did you get a telephone call? How did you get to meet with Mr. Devine? Did he call you on the phone or did he come to your house?

THE WITNESS: Yes, he come to my house. He came to my house once and I was to go to the Federal Building. I don't really remember.

THE COURT: I see. It was then after you knew that he was going to visit you and ask you some questions that you talked to Junior?

THE WITNESS: No, they just tell me that before.

THE COURT: Before?

THE WITNESS: Yes, so I must tell him.

THE COURT: If they do come?

THE WITNESS: Yes.

THE COURT: Mr. Crimi, about this conversation between Carol and Monica, should we listen to it?

MR. CRIMI: Well, first of all, I am not sure when this conversation took place. Was it after October 1st?

THE WITNESS: No, before Keith even come to Canada.

MR. CRIMI: Oh, this was some general conversation.

THE COURT: All right. Did you talk, - I have asked this question I think three times. Did you talk to Carol Pryce after October 1st about, - that is the date when Keith and the others tried to come into the United States.

THE WITNESS: If I talk to him after that?

THE COURT: Yes.

THE WITNESS: No.

THE COURT: About giving a statement to the Immigration people?

THE WITNESS: No.

THE COURT: You did not?

THE WITNESS: No.

THE COURT: When did you talk to him? I mean he talked to you sometime about if you are ever asked about where you lived and who you were living with - -

THE WITNESS: Yes.

THE COURT: When did you have that conversation with him?

THE WITNESS: It was before Keith come to Canada, before they arrest Keith or anything like that, but they say I must always remember to tell the Immigration that I was living with Junior just to prove that the marriage was a marriage.

THE COURT: All right.

MR. CRIMI: Your Honor, I am going to - -

THE COURT: At least we have the time period.

MR. CRIMI: Right. What I think has happened

here, number one, I don't think this question is proper at this time because this did not deal with a conversation that is related at all to this indictment. Apparently, we are getting involved now in the possibility of a second possible violation, the violation dealing with a marriage solely for the purpose of getting someone into the United States which is apparently what happened in her case and from what I understand from the witness in all fairness to the witness and to the Government, that apparently, at the time of this other violation, that Barrington Pryce and I think she claims Carol Pryce told her that in order for her not to get in trouble with the immigration, that at any time, - now, this relates to this marriage business, - that at any time she is asked that she should answer that she was living with him and it was no specific direction given as to this interrogation.

THE COURT: Mr. Crimi, as far as the witness says now, as far as Barrington, you did

not have any conversation with Barrington about any of these problems?

THE WITNESS: No.

THE COURT: It was with Junior?

THE WITNESS: Yes.

MR. CRIMI: I thought she said originally it was Barrington.

THE WITNESS: It was both of them.

MR. CRIMI: That is what he is asking you.

THE COURT: That is what I am asking you. Did you talk to Barrington about what you ought to tell the Immigration people if they asked you about whether or not you lived with Carol Pryce?

THE WITNESS: Yes, yes, but not at the same time with the both of them.

THE COURT: When did you talk to Barrington about it?

THE WITNESS: Well, when they arrested Keith, when he hear that they arrested Keith, he said that if the Immigration comes to me, I must tell them.

THE COURT: This was after the arrest that you talked to Barrington?

THE WITNESS: Yes, when Keith come here.

THE COURT: Mr. Cohen, what do you say about that?

MR. COHEN: Your Honor, you have to take the case as you find it. We are dealing with Jamaicans who come in. They don't have any contacts here. She was told, given instructions. Monica doesn't know what is going to happen to her. She followed those instructions when she answered the questions of Mr. Devine. Mr. Crimi opened the door, maybe inadvertently, but he opened the door and I think she should be allowed to clarify it because of the position that she is in. We are not dealing with a - -

THE COURT: This is only on the credibility now. Mr. Crimi asked her whether or not this was true or false when she told Mr. Devine that she had lived with Carol Pryce for about a month and whether she lived on Dundan Street.

MR. COHEN: Dudley.

THE COURT: Dudley. I think that you ought to be permitted to have her testify about the conversation that she had with Carol

Pryce.

MR. CRIMI: She didn't have a conversation with Carol Pryce. It was long before Keith Grizzle came and, your Honor, that is going to open the door to this business of the marriage that will become very prejudicial and as far as Barrington Pryce is concerned, I think that would be hearsay. He is not involved in this case at all.

MR. COHEN: Your Honor, I distinctly heard her say that she was told to say it in her answer to Mr. Crimi and I believe that - -

THE COURT: Yes, she did. She told us that, as I understand.

MR. COHEN: In the presence of the jury, your Honor, I heard her say this.

THE COURT: There was a leading question in the first place, but on Barrington, that happened after October 1st and I will permit, - I think, Mr. Crimi, as far as the marriage is concerned and all of that business, the jury knows. Don't they know that now, Mr. Crimi, that she was married to Carol Pryce?

MR. CRIMI: Your Honor, I think you did ask her who it was and she said it was her husband, but we haven't gone into the situation.

THE COURT: Out of extra caution, Mr. Cohen, I will say cannot ask about the conversation with Carol Pryce, but I will let you have her testimony, tell us what Barrington told her.

MR. COHEN: I would like to straighten - -

THE COURT: Mr. Crimi, the problem, the thing we are faced with here now, you have asked her on cross examination about this, you know, why, the fact that she told a lie to Devine and it seems to me in fairness to the witness and keeping the whole thing in context she should be entitled to give her reason why.

MR. CRIMI: Well then, but isn't - -

THE COURT: It only has to do with credibility.

MR. CRIMI: All right, and aren't you allowing- -

THE COURT: Certainly, as far as Barrington, he has no connection with Carol and this is not to be, - whatever Barrington said - -

MR. CRIMI: It is hearsay is what I am saying.

THE COURT: I know it is hearsay. That is obvious, but it was, - it isn't hearsay in the sense that it is any,- well, all right. Let us go ahead. The lady has been on the stand long enough. I don't think this is this big a point in the case to get this in about whether she was on Dudley Street or not and whether she lived with Carol Pryce for a month or not and I will sustain the objection to it so we won't hear anymore about why she gave Mr. Devine the wrong answer. Have the jury come back, please.

(Jury returns to the courtroom.)

MR. COHEN: Thank you, your Honor.

THE COURT: Is there anything else, Mr. Cohen? Mr. Crimi, I understand Mr. Cohen is finished. Do you have any further questions?

MR. CRIMI: No, if Mr. Cohen hasn't.

THE COURT: Nothing further, Mr.Cohen?

MR. COHEN: No further questions of Mrs. Pryce. Thank you, your Honor.

THE COURT: Thank you, Mrs. Pryce. Very well. Next witness, please.

* * * * * * * * *

MANNING McCUTCHEON (16 Miller Street, Rochester, New York), a witness called by and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. COHEN:

Q Mr. McCutcheon, what is your occupation?

A Xerox, Henrietta, Rochester.

Q And how long have you worked at Xerox?

A It will be four years June the 20th.

Q Will you please take a look at Government's Exhibits 36 in evidence, 37 in evidence, 9 in evidence and 8 in evidence. Do you recognize those exhibits?

A Yes.

Q Would you tell us what Government Exhibit 36 and 37 is?

A 36 and 37 are my driver's license.

Q Could you tell us what Government's Exhibit 8 is?

A My Xerox employee badge.

Q Could you tell us what Government Exhibit 9 is?

A. My blood donor's card.

Q. Could you tell us when the last time you had those documents in your possession was?

A. It was the Friday before the day that Mr. Cohen got in touch with me.

Q. Mr. who got - -

A. Mr. Devine or somebody.

MR. CRIMI: The Friday before the day - -

THE COURT: The Friday before the day. Let us put it around the other way.

THE WITNESS: I can't remember the date.

THE COURT: Was it back in last year?

THE WITNESS: Yes, I guess it was, when those people came out to Xerox.

THE COURT: In 1973?

THE WITNESS: Yes.

THE COURT: Some agent or inspector came there?

THE WITNESS: Yes.

MR. CRIMI: I am going to object to that.

THE COURT: All right.

MR. CRIMI: I think that is not an answer to any question, your Honor.

THE COURT: Very well. Is there some other way we can do this, Mr. Cohen? All right, go ahead, Mr. Cohen.

MR. COHEN: Thank you.

MR. CRIMI: I hope I am not bothering you. I just can't hear. I am sorry.

MR. COHEN: If you don't mind, your Honor, I would like to consult with co-counsel.

THE COURT: Surely. Mr. McCutcheon, what do you do at Xerox, please?

THE WITNESS: I am assembly worker.

THE COURT: You are what?

THE WITNESS: An extra assembly worker.

THE COURT: An assembly worker.

BY MR. COHEN:

Q Did there come a time when these left your possession?

A Yes.

Q And directing your attention to September, the end of September, 1973, is that the time?

A Yes. I think it was the 28th. It was on a Friday the last time that they was in my, - the last time that I seen them. I think it was the 28th.

Q The Friday before the 1st Monday in October?

A Right.

Q In 1973?

A Right.

Q How do you know that you had them in your possession

on that day?

A. On that Friday morning I got up to go to work and I had to use my employee badge to get in to go to work that Friday morning.

Q. Do you know how they came to leave your possession?

A. No.

THE COURT: Excuse me. On Friday morning, you went to go to work and the calendar indicates that would be September 28th.

THE WITNESS: Right.

THE COURT: Did you have your employee badge?

THE WITNESS: Right. I had everything.

THE COURT: You had everything?

THE WITNESS: Right.

THE COURT: And you used it?

THE WITNESS: Right.

THE COURT: Did you work on Saturday the 29th or Sunday the 30th?

THE WITNESS: No, I didn't.

THE COURT: When was the next time you went to work?

THE WITNESS: That Monday.

THE COURT: October 1st?

THE WITNESS: Yes.

THE COURT: Did you have your employee badge then?

THE WITNESS: No.

THE COURT: Did you have these other papers then?

THE WITNESS: No, I didn't have none at all.

THE COURT: All right.

BY MR. COHEN:

Q When did you determine that they were missing?

A Well, I found out they was missing was on Saturday.

Q No, when did you personally discover that you didn't have them?

A That Saturday morning.

Q That Saturday?

A Yes.

THE COURT: When you say "that Saturday" - -

THE WITNESS: The Saturday after the Friday, the 29th.

THE COURT: That would be the 29th of September?

THE WITNESS: Right.

THE COURT: All right.

BY MR. COHEN:

Q Now, could you tell us how many places, - where were you between the Friday when you had them and the Saturday that you discovered they were missing?

A. That Friday afternoon after I left work, I went down to Chivakies.

THE COURT: Do you know how it is spelled?

THE WITNESS: No.

THE COURT: We will get it later. Mr. Crimi probably will know.

MR. CRIMI: No. I have never been in a bar in my life. Chavakies.

THE COURT: Excuse me, Mr. Crimi. I shouldn't have said that.

MR. CRIMI: That is all right.

THE COURT: Go ahead, Mr. Cohen.

MR. CRIMI: Maybe we can get the address.

BY MR. COHEN:

Q. Where else were you?

A. After I left work, I went down to the bar and I went home and then I left home and I went to the liquor store and I came back home and I left and then I went out.

Q. And where did you go?

A. First I went by George Harden house and he wasn't there.

THE COURT: How do you spell that?

THE WITNESS: H-a-r-d-e-n.

THE COURT: H-a-r-d-e-n.

BY MR. COHEN:

Q And then what did you do?

A And then I went back to Chivakies looking for John McVey and I didn't see his car so I didn't stop.

Q And then where did you go?

A I drove down Main Street and after Main I went on Dudley Street.

Q And where on Dudley Street did you go?

A Carol Pryce house.

Q Do you see Carol Pryce here today?

A Yes, I do.

Q Will you point him out to the jury,please?

A He is over there.

Q And what is he wearing?

A A blue suit.

Q And how long were you at Carol Pryce's house?

A Until maybe about midnight.

Q And was anyone else there?

A Yes, there was somebody else there, but I didn't know the guy.

Q And where did you go after that?

THE COURT: Excuse me. You are at Carol Pryce's house and there is someone else there, some other man you didn't know.

Was Mr. Pryce there?

THE WITNESS: Yes, he was there.

THE COURT: Very well. Go ahead, Mr. Cohen.

BY MR. COHEN:

Q Where did you go after that?

A I left and went to my cousin house who was having a party which was late, about maybe 3:00 or 3:30 and I got there and I doze off to sleep.

Q And then where did you go after that?

A Well, I woke up and another cousin of mine, we was together early that Saturday morning and he wanted me to buy him a drink so I went in this place on Syracuse Street to write a check to buy him and me a drink and I wrote the check to get the liquor and when I went to get it he said I couldn't cash the check because I didn't have my identification and that's when I found out that I didn't have it.

Q Now, did you take any steps to determine where your identification was?

A Well, first I looked in my car and it wasn't there so I went to my cousin house and he said that it wasn't there so then I went back on Dudley Street.

Q And who was on Dudley Street when you went back?

A Some other guy. This guy that - -

THE COURT: Excuse me. You went to Dudley Street. Where did you go on Dudley Street?

THE WITNESS: To Carol Pryce house.

THE COURT: Who was there when you arrived?

THE WITNESS: I don't know that guy that was there. When I knocked on the door, he said Carol wasn't there and so I just left.

THE COURT: He said Carol wasn't there?

THE WITNESS: Right.

THE COURT: All right, and then you left?

THE WITNESS: Yes.

THE COURT: All right, Mr. Cohen.

BY MR. COHEN:

Q. Okay. Now, you indicated you went to a lot of bars. Were you drinking between Friday and Saturday?

A. Yes, I was. I started drinking at lunch time, the Friday, the 28th. I was drinking at lunch time and when I left the bar I went and got something else to drink.

Q. And were you drunk on Friday and Saturday?

A. I wasn't drunk, but I was real high, you know.

Q. Have you ever been asked these questions before?

A. Yes, I have.

Q. By whom?

A. You and - -

THE COURT: Mr. Cohen, I think that matters not at all how many times a person was asked questions and, therefore, - I know you have asked it on other occasions and it just does not matter, ladies and gentlemen, how many times and how the questions were put or what the questions were. They are not here before you. The questions and answers which are made and given today are before you. Anything else, Mr. Cohen?

MR. COHEN: Thank you, your Honor, no.

THE COURT: Mr. Crimi, any questions?

MR. CRIMI: I would just like a moment, your Honor. No questions, your Honor.

THE COURT: No questions. All right, Mr. McCutcheon, thank you very much. Do you have a short witness, Mr. Cohen?

MR. COHEN: I think so, your Honor.

THE COURT: All right.

MR. COHEN: In fact, I have two short witnesses.

THE COURT: We will see. One at a time. Only one witness at a time.

MR. COHEN: Mr. Madison.

THE COURT: We have enough trouble with one

witness at a time, Mr. Cohen, in all cases. I should say I don't mean just this case, but in any case.

* * * * * * * * * * * *

STEPHEN MADISON (640 Calkins Road, Rochester, New York), a witness called by and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. COHEN:

Q. Mr. Madison, are you employed?

A. Yes.

Q. And where are you employed?

A. I work at Xerox.

Q. And what do you do?

A. I am a fork lift operator.

Q. And how long have you been employed by Xerox?

A. Three years.

Q. Let me show you Government Exhibit Number 6 in evidence and let me also show you Government Exhibit Number 25 for identification, Government Exhibit Number 10 for identification and Government Exhibit Number 11 for

identification. Do you recognize those exhibits?

A. Yes, mine.

Q. All right. Now, would you tell us, please, what Government's Exhibit Number 6 in evidence is?

A. That's my driver's license.

Q. And could you tell us, please, what Government's Exhibit Number 11 is?

A. That is my draft classification card.

Q. Would you tell us, please, what Government Exhibit Number 10 is?

A. That is my Blue Cross and Blue Shield card.

Q. Would you tell us, please, what Government Exhibit Number 25 is?

A. That is my billfold.

Q. When was the last time you had those exhibits in your possession?

A. October 1, 1973.

Q. And where were you at that time?

A. At work.

Q. And how did those items come to leave your possession?

A. I loaned them to Carol Pryce.

Q. And where was that?

A. This was at work.

Q. Is Mr. Pryce here today?

A. Yes.

Q And could you show us where he is?

A He is right over there in the blue suit.

Q Did you have a conversation with Mr. Pryce?

A Yes. He asked if he could borrow them for about an hour to an hour and a half and I said "Yes". He asked for my driver's license and I just gave him the whole thing.

Q You gave him the whole thing?

A Yes.

Q And at the time that he borrowed them, did you have any further conversation?

A I asked him if I could get in any trouble and he said "No".

Q Now, did he return them to you in an hour, an hour and a half?

A No. Later on that day, I looked for them.

Q Did you take any steps on October 1, 1973 to recover those documents?

A Yes. Later on that day I looked for him and found out he left the building for the day.

Q What time was it you loaned him those documents?

A Around 8:00 in the morning.

Q And what time was it that you went to look for him?

A It was just before lunch, just before 11:30.

Q Now, did you do anything else to try and recover those

documents?

A. The next day when I came in I looked for him.

Q. And what time was that?

A. It was around 8:30.

Q. And did you see him then?

A. Yes.

Q. Did you have a conversation with him?

A. Yes.

Q. What did you say and what did he say?

A. I asked him for my papers back and he said that some people had got caught trying to come across the Canadian border with my papers.

Q. Did you say anything else to him?

A. Well, I asked what I do, you know, what should I do if I was asked by the police and he told me just to tell the truth because he didn't want me to take any of the blame.

MR. COHEN: Thank you very much, Mr. Madison. I don't have any further questions of you.

MR. CRIMI: No questions.

THE COURT: No questions. Thank you, Mr. Madison. Ladies and gentlemen, I think now would be a good time to be in recess. I think we better be in recess, Mr. Cohen, because there is something else

I must do. We will be in recess until 2:00 o'clock. In the meantime, please do not talk about the case with yourselves or with anyone else. Talk about something else when you are with your fellow jurors. We will resume at 2:00 p.m.

(Recess taken at 12:48 p.m.)

* * * * * * * * * * *

PROCEEDINGS: October 31, 1974, 2:00 p.m.

APPEARANCES: As before noted.

(Defendant present.)

(Jury present.)

MR. COHEN: Your Honor, the Government would like to move into evidence at this time Exhibit Number 25, Exhibit Number 10 and Exhibit Number 11, the two documents and the billfold identified by the last witness Mr. Madison.

THE COURT: Mr. Crimi, shall we take it up now or take it up later? Maybe we better take it up later.

MR. CRIMI: I would prefer that.

L E R O Y E D W A R D W H E E L E R (72-B Windsor Gardens, Rochester, New York), a witness called by and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. COHEN:

Q. Mr. Wheeler, what is your occupation?

A. I am a baker for Xerox Corporation in Rochester.

Q. And how long have you been employed by Xerox?

A. Six years in March.

Q. And were you working at Xerox on October 1, 1973?

A. Yes, I was.

Q. Did anything unusual, - what were the hours of your employment that day?

A. The hours of that day was from 7:00 until around 10:30.

Q. Did anything unusual occur?

MR. CRIMI: I object to the question, your Honor, "unusual".

THE COURT: "Unusual", yes. I will sustain the objection.

BY MR. COHEN:

Q. What happened, Mr. Wheeler?

A. Well, about 9:00 or 9:30 Carol Pryce wanted to use my car.

Q. Is Carol Pryce here today?

A. Yes.

Q. Would you describe him to the jury, please, or point him out?

A. Right there in the blue suit.

MR. CRIMI: I don't understand why we have to get into what he is wearing and point him out. He is the only person at the table.

THE COURT: Yes, that is right. I think that is sufficient.

BY MR. COHEN:

Q. About what time was this, sir?

A. Between 9:00 and 9:30 in the morning.

Q. And did you have any conversation with Carol Pryce at that time?

A. Yes. He wanted to use the car.

Q. Could you tell us what he said and what you said, sir?

A. Well, he approached me and said he wanted to use my car. He wanted to go to Buffalo and --

Q. Excuse me, may I please ask you to speak a little louder?

A. He approached me. He wanted to use my car to go to Buffalo and --

Q. What did he say and what did you say?

A. I am trying to tell you. He asked me if he could use my car because his car, the front end was out of line and he would be back between 7:00 and 7:30 that evening so, - and I had to go home because I was sick, so he picked the car up at my house at around 11:00 or a little after.

Q. I take it then you agreed?
A. Yes, I did.
Q. And did you see him again that day?
A. No.
Q. I mean after you left Xerox that day did you see him again?
A. Yes. He came to the house and he got the car and left his car with me.
Q. Now, what kind of car is that?
A. My car is a 1973 Chevrolet Impala, blue.
Q. And what did you do?
A. Well, I gave him the keys and the registration and he gave me the keys to his car and said it would be all right to go anywhere around town, if I had to go anywhere, use it.
Q. And did Mr. Pryce return your car to you that day?
A. No, he didn't.
Q. Did you do anything to try and get the vehicle back?
A. Well, I called several people later that night to find out where the car was but I couldn't get in touch with it.
Q. Did you do anything else to try and recover the vehicle back?
A. That evening?
Q. That evening.

A. No.
Q. Any other time?
A. Well, I didn't see him until the next day.
Q. And where was that?
A. At work.
Q. About what time?
A. 7:00 o'clock in the morning.
Q. Will you tell us what happened, please?
A. Well, he came to work and he walked by. We work in the same department and I finally went over and asked him, you know, where my car was.
Q. And what did he say?
A. He said "I don't know how to tell you this, but your car is impounded".
Q. Did you have any further conversation with him?
A. Well, then I said "Where is the car impounded", and he told me it was at the Customs in Buffalo, so then I proceeded to go call different places to try and find out where it was and I couldn't find out so then I went back to him and I asked him to give the number or something where the car was, so then he did.
Q. And what did he say and what did you say?
A. Well, he said "I thought maybe you would wait", he says, "because you are going to get your car back", just like that, so I said "I want my car back today", so then he

give me the number of Mr. Devine and I called Mr. Devine.

Q. Now, did you have any further conversations with Mr. Pryce regarding this subject?

A. What do you mean, what I just told you?

MR. CRIMI: Wait a minute. The witness is not understanding the question, I guess, your Honor.

THE COURT: Why not either put the question again or ask it in a different way? You talked to Mr. Pryce on October 2nd early in the day about your car and you related the other conversation during the morning. Did you talk to him again at a later time about your vehicle?

THE WITNESS: No, I didn't. After he give me the phone number to get in touch with Mr. Devine, I proceeded to come over here to Buffalo the same day.

THE COURT: Okay. We do not want any conversation with Mr. Devine or anybody connected with the Immigration or Customs, but did you talk to Mr. Pryce again any further about the car or any problems connected

with the car? Your answer is "No"?

THE WITNESS: After I got the phone number, I didn't speak with him anymore about the car.

BY MR. COHEN:

Q. Do you remember any other conversation between you and Mr. Pryce on the morning of October 2, 1973?

A. Yes. I asked him, I said "How did you get back here if you didn't bring my car back", and he said, "I flew". I said, "Well, you lent my car to somebody else". He said "I know I am responsible". I said "No, you are not responsible when you gave my car to somebody else".

Q. Did you ever receive your car back?

A. Yes, I did.

Q. And where was it when you received it back?

A. Customs in, - I think Lewiston Bridge.

Q. And what kind of car was that again?

A. 1973 Blue Impala Chevrolet.

MR. COHEN: Thank you very much. I have no further questions, Mr. Wheeler.

THE COURT: Mr. Crimi.

MR. CRIMI: One moment, your Honor. I have no questions.

MR. COHEN: May I ask Mr. Wheeler one more question?

THE COURT: One more question.

BY MR. COHEN:

Q. Can you remember in anymore detail what he said and what you said with respect to the conversation on October 2, 1974?

MR. CRIMI: Well, your Honor --

THE COURT: 1973.

MR. COHEN: 1973, rather.

THE WITNESS: Yes. When I came back with the car he called my house. He said, "You are back, you got your car", and I said "Yes".

BY MR. COHEN:

Q. Now, excuse me --

MR. CRIMI: Wait a minute.

BY MR. COHEN:

Q. Continue.

MR. CRIMI: That is not responsive to the question as far as --

THE COURT: Mr. Crimi is right. Now he started to tell us about a conversation with Mr. Pryce after he returned, right?

MR. COHEN: Right, yes.

THE COURT: What did Mr. Pryce say to you when you got back to your home in Rochester with your automobile?

THE WITNESS: He called me on the phone and he said "You are back with the car", and I said "Yes", and he said "I left some stuff in the trunk. How about meeting me someplace so I can get it", so I said "Okay", and we met on Jefferson Avenue behind the Peoples Club and he went in the tool box and he got some papers of some kind and a couple of tapes that were left in the trunk.

BY MR. COHEN:

Q. Could you describe those papers?

A. It had a picture on one of them, a plastic envelope with a red leather bag of some kind.

Q. And where were they?

A. Under tools in the tool box.

MR. CRIMI: I object to this. I don't know what

the materiality of this is.

THE COURT: What we will do is I find it is not connected with any other evidence in the case so I will strike it and if it is connected up later on, we will consider it, but we will just, - you are directed to disregard it. We do not know what these papers were or whether or not they had anything to do with this case or with something else and I think that we must assume that they had to do with something else rather than this case here. There could be a lot of reasons why a person would have papers in an automobile in a trunk, so that we are not to speculate or guess or in any way consider these papers. Anything else, Mr. Cohen?

BY MR. COHEN:

Q. You indicated that he told you he flew back?

A. Yes.

Q. Did he tell you from where?

A. No, he did not.

MR. COHEN: I have no further questions.

THE COURT: Mr. Crimi.

MR. CRIMI: No questions.

THE COURT: Thank you very much, Mr. Wheeler. Next witness, please.

* * * * * * * * *

C H R I S T O P H E R B R O W N (37 Peck Street, Rochester, New York), a witness called by and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. COHEN:

MR. COHEN: Your Honor, at the time of the marking of exhibits, a photocopy of this exhibit was marked Exhibit 17. I am just wondering if I could have the original of this marked Exhibit 17.

THE COURT: Mark the original, please, same exhibit Number 17.

BY MR. COHEN:

Q. Government's Exhibit Number 17. Mr. Brown, what is your occupation?

A. Supervisor for Xerox Corporation.

Q. And how long have you worked for Xerox?

A. Approximately ten years.

Q. And how long have you been a supervisor?

A. Approximately four and a half years.

Q. Could you tell us what your duties are as a supervisor?

A. It is my job to supervise the activities of hourly operators.

Q. And what else do you do? How do you do that?

A. Well, it incorporates a number of things. I am around when different problems occur in a restricted or designated area. I maintain attendance records, a number of various things.

Q. And do your duties require you to maintain a record of the time spent in employment by each individual on a given day?

A. Yes, it does.

Q. Were you working on October 1, 1973?

A. Yes.

Q. What hours were your hours of employment on that day?

A. It was the day shift, from 7:00 to 3:30.

Q. In the course of your employment, did you come to know

an individual by the name of Carol Pryce?

A. Yes, I did.

Q. Is Mr. Pryce here today?

A. Yes, the gentleman on the other side in the blue.

Q. How did you come to know him?

A. At that time he was an hourly employee working for me.

Q. And that time was about October 1, 1973?

A. That's correct.

Q. Okay. Did you see Mr. Pryce on October 1, 1973?

A. Yes, I did.

Q. To your knowledge did he work on October 1, 1973?

A. Yes, he did.

Q. How long did he work on that day?

A. According to my record he worked approximately three hours and forty-five minutes.

Q. Do you know which hours those were?

A. They were hours during the morning and that would have been from 7:00 to 10:45, thereabouts.

Q. Let me show you Government Exhibit Number 17. Do you recognize that?

A. Yes, I do.

Q. Could you tell us what that is, please?

A. This is an attendance roster, attendance record that I kept of all the hourly operators, their time, whatever their hours were spent during the day, their activity.

Q. And what period of time does that embrace?

A. It is the day operation from 7:00 to 3:30 and this is the month of October '73.

Q. Now, you said that represents the hours worked during October 1973?

A. That's correct. Well, yes, the whole month of October 1973.

Q. And does that include the specific hours worked by Carol Pryce?

A. Yes, it does.

Q. Does it show, - does it contain the record for October 1, 1973?

A. Yes, it does.

Q. And what is that?

MR. CRIMI: I hate to be technical, but it isn't in evidence.

THE COURT: A few preliminaries. Mr. Brown, you have a sheet in front of you there?

THE WITNESS: Yes, I do.

THE COURT: Is this an original record?

THE WITNESS: Yes, it is.

THE COURT: Who keeps that record?

THE WITNESS: I kept that record.

THE COURT: Who prepared it? Did you prepare it?

THE WITNESS: Yes, I did.

THE COURT: This is what, a Xerox sheet here on this other side?

THE WITNESS: The other side are the names of the operators. Those are the operators that worked for me during that period of time.

THE COURT: During that period of time?

THE WITNESS: Correct.

THE COURT: Is this kept in the regular course of business of the Xerox Company?

THE WITNESS: Yes. Each supervisor or each foreman designaged to an area should be responsible for the hours produced by every operator. That is one of the forms.

THE COURT: All right. This has been kept in the regular course of business of Xerox since that time?

THE WITNESS: Yes.

THE COURT: Was it accurately made when you made it?

THE WITNESS: To my knowledge, yes.

THE COURT: You list what, the total time that the individual worked per day?

THE WITNESS: Yes.

THE COURT: Eight?

THE WITNESS: Yes.

THE COURT: Is there any way you can tell if a person works less than eight hours? You have some here five, seven, - what hours of the day that it was, whether in the beginning or the end of the shift?

THE WITNESS: In this case whether in the day at the end or in the beginning, no, not on this record, it doesn't show.

THE COURT: All right. Any questions about this, Mr. Crimi, before we go ahead?

MR. CRIMI: Well, let me see that, will you. Do you make this out yourself?

THE WITNESS: Yes.

MR. CRIMI: Do you make it out every day?

THE WITNESS: Every day.

MR. CRIMI: You start out on the first of the month with an absolute blank piece of paper, is that correct?

THE WITNESS: Right.

MR. CRIMI: Now, for instance there is a fellow here by the name of Jacobi. It shows that on the, - if I read it correctly, on the 8th day of October he worked 6.5 hours, is that correct?

THE WITNESS: That's correct.

MR. CRIMI: And on the 12th day he worked 4.5 hours?

THE WITNESS: Yes.

MR. CRIMI: Or it says 45.

THE WITNESS: 4.5.

MR. CRIMI: 4.5. Now, can you tell by this record whether he came in at 7:00 o'clock in the morning and lasted 6.5 hours or whether he came in at 10:00 o'clock and lasted 6.5 hours?

THE WITNESS: Not exactly by that record, no.

MR. CRIMI: No. Now, where do you get the information to put on this record?

THE WITNESS: Well, that is through observation of the foreman in the area.

MR. CRIMI: Well, are you the foreman in the area?

THE WITNESS: At that time, yes.

MR. CRIMI: You don't get it from a time card or anything like that?

THE WITNESS: Yes. Normally an operator at the end of the day or anytime he leaves the area is supposed to clock out on a time card and on the time card would show

a.m. or p.m.

MR. CRIMI: I see.

THE WITNESS: But it was my job at that time to keep a record of the actual time spent on the job.

MR. CRIMI: How many operators did you have?

THE WITNESS: Approximately thirty-two, thirty-three I think it was at that time.

MR. CRIMI: Is this the complete list of all the operators?

THE WITNESS: Yes, it is.

MR. CRIMI: I see. Well, would you personally know that all thirty-two were in the department for the full eight hours?

THE WITNESS: From memory at this time I don't recall, but had they left for something I would have known.

MR. CRIMI: You wouldn't check with the time cards?

THE WITNESS: No. I usually check the time cards on a Friday because all time cards have to be signed to authorize or to verify whether the hours are correct. Those hours on the time card should compare or should be compared to my roster or to the

record that I have. If there is any deviation that is questioned through the operator or through myself or others.

MR. CRIMI: Well, was this list compared with time cards do you know?

THE WITNESS: On Friday it was not.

MR. CRIMI: It was not. Well, I have an objection insofar as it doesn't seem to be able to substantiate precisely when Mr. Pryce was absent.

THE COURT: I think the witness clearly makes that point. I will overrule the objection and let it be used.

MR. COHEN: Your Honor, I would like to move the admission into evidence of Government Exhibit Number 17.

MR. CRIMI: Well, I thought I made that objection.

THE COURT: Overrule the objection. Mark it in evidence.

(Government Exhibit Number 17 received in evidence.)

BY MR. COHEN:

Q. Do you remember the hours which Carol Pryce worked on October 1, 1973?

A. I can't say exactly that I do remember.

Q. Is there a record which would assist your memory?

A. There should be a record. Yes, there is.

Q. And what record is that?

A. That is one record showing, - that the clerks keep in their office. It shows the hours, what time of the morning that he left or what time of day he left.

Q. Would you tell us what the name of that record is?

A. In-Out Clerk Record.

Q. Your Honor, I would like to have this exhibit marked 38.

THE COURT: Is that the one we just talked about or another one?

MR. CRIMI: No, this is another one. Was this previously marked?

MR. COHEN: No.

THE COURT: Mark that as an exhibit for idenfification, Number 38.

(Government Exhibit Number 38 marked for identification.)

BY MR. COHEN:

Q. Just tc set the record straight, is this the record to

which you were referring?

A. Yes, it is.

Q. Okay. I would like you to take a look at Government Exhibit for identification 38. Could you tell me whether or not that particular record was kept in the ordinary course of Xerox's business?

A. Yes, it is.

Q. Would you tell us what it is, please?

A. This is an In-Out record and absence record that is kept in the main office by the clerk, a female clerk.

THE COURT: Before we have testimony about this, about the details of it, Mr. Crimi, do you have some questions about it?

MR. CRIMI: Well, I don't think he has laid the proper foundation.

THE COURT: You do not keep this record?

THE WITNESS: No, I don't.

THE COURT: Do you have opportunity in your day-in and day-out business to refer to it or use it?

THE WITNESS: If I question the absenteeism of an operator or an individual, yes, I do have that opportunity.

THE COURT: Did you happen to have any occasion

to use this particular record in the course of your duties?

THE WITNESS: Sometimes.

THE COURT: No, this one here.

THE WITNESS: This in the course of the day?

THE COURT: Not today, but when you were working at Xerox?

THE WITNESS: Yes, I have.

THE COURT: This particular one here?

THE WITNESS: Yes. Mr. Pryce was --

THE COURT: Just a minute.

THE WITNESS: I am sorry.

THE COURT: Let me see it a minute. This is not kept in your department?

THE WITNESS: No, it is not.

THE COURT: There are various notations on here. You did not write any of this material in here?

THE WITNESS: No, this is not put on by me.

THE COURT: It is put on by some clerk?

THE WITNESS: That's correct.

THE COURT: You don't know where she gets her information?

THE WITNESS: Yes. She gets this information from input in timekeeping and also from

a sheet I turn in, in-out, absent during the week or missed hours.

THE COURT: In other words, she gets her information partly from you and partly from other sources?

THE WITNESS: That's correct.

THE COURT: I will sustain the objection to the testimony about that particular record by Mr. Brown.

BY MR. COHEN:

Q. Mr. Brown, is your memory exhausted as to what particular hours Caroly Pryce worked on October 1, 1973?

MR. CRIMI: Well, I am going to object to that. I think he has already testified to that.

THE COURT: I think he has testified he cannot remember the hours of his own memory when he worked.

THE WITNESS: I can't really say what hours.

THE COURT: All right.

BY MR. COHEN:

Q. Is there a document that would refresh your recollection?

A. No, I guess not.

Q. Is there any document that would make you remember what hour, what hours it was that Carol Pryce worked on October 1, 1973?

THE COURT: Mr. Cohen, I am not going to let you use that paper for this purpose. Mr. Brown in the course of his duties is evidently familiar with that but he is not familiar with all of that and he is not familiar with all of the information that went into making it up. It is not kept in his department and the reason it is made and what purpose it is put to, he is not aware of that, and it seems to me he is not the person who, - here we have a trial, a criminal case. It just seems to me he should not be permitted to testify about it.

MR. COHEN: Your Honor, I would like to have this exhibit marked Government Exhibit Number 38. It was unavailable to us at the time we were marking exhibits for identification.

(Government Exhibit Number 39 marked for identification.)

BY MR. COHEN:

Q. Mr. Brown, let me show you Government Exhibit Number 39. Do you recognize that?

A. Yes, I do.

Q. Could you tell us what it is?

A. This is a time card and each hourly operator is required to punch in whatever shift he is working; also punch out and in for lunch and also punch out to go home.

Q. Have you ever seen that time card before?

A. Yes, sir, I have.

Q. When was that?

MR. CRIMI: Your Honor, I object to these questions. That is not the way to get the card in evidence.

THE COURT: You are right. Excuse me, Mr. Brown, is this a Xerox record?

THE WITNESS: Yes, it is.

THE COURT: There is no doubt about that in your mind?

THE WITNESS: Positive.

THE COURT: Is that record kept in the regular

course of business of the Xerox Corporation?

THE WITNESS: Yes, it is.

THE COURT: Or a record similar to that?

THE WITNESS: No, this is it.

THE COURT: No. I mean this is, - every employee or most employees would have a card which is used in the manner you describe, punch in and punch out?

THE WITNESS: Every hourly operator, yes.

THE COURT: Do you know are these kept in your department or in what department are they kept?

THE WITNESS: They are kept really in my department. They are kept in a general area from various departments, to get to the department, a central point.

THE COURT: Do you need to refer to a card record such as this in the course of your regular duties with Xerox?

THE WITNESS: On Friday it is mandatory that I sign the time card in order to verify the times on the card.

THE COURT: Does your signature appear on this card?

THE WITNESS: Yes, it does.

THE COURT: Can I see it, please. Very well. Mr. Crimi, do you want to ask some questions about it?

MR. CRIMI: May I see the exhibit, please?

THE COURT: Will you show that to Mr. Crimi, Mr. Brown?

MR. CRIMI: There is no name on this time card, is there?

THE WITNESS: Yes, there is.

MR. CRIMI: There is?

THE COURT: Mr. Crimi, I think if you flip it to the side.

MR. CRIMI: I see. I am sorry. It is on the side. All right, that 10-7-73, is that the Friday you are talking about?

THE WITNESS: That would be the week ending usually a Sunday.

THE COURT: The weeks end on a Sunday?

THE WITNESS: Sunday.

MR. CRIMI: And you initialed this on Friday?

THE WITNESS: Friday.

MR. CRIMI: So the first day would be --

THE WITNESS: Monday.

MR. CRIMI: Monday, October --

THE WITNESS: 1st.

MR. CRIMI: 1st, and are your initials C.C.B.?

THE WITNESS: Yes, it is.

MR. CRIMI: I see. You have got some markings here, "Void".

THE WITNESS: Yes.

MR. CRIMI: And then you got some markings in ink.

THE WITNESS: Yes.

MR. CRIMI: The ink is the times that the person was present at work?

THE WITNESS: That's right. Those are the actual times.

MR. CRIMI: In red, -is this your writing in red?

THE WITNESS: No, it is not.

MR. CRIMI: Whose is that?

THE WITNESS: That is the timekeeping people, people in timekeeping mark in the red.

MR. CRIMI: I have no objection, your Honor.

THE COURT: Please?

MR. CRIMI: I have no objection.

THE COURT: All right. Mark it in evidence, please.

(Government Exhibit Number 39 received in evidence.)

THE COURT: All right, Mr. Cohen, you may continue.

BY MR. COHEN:

Q. Mr. Brown, would you please tell us the time that Carol Pryce worked at Xerox on October 1, 1973?

A. Approximately three hours and forty-five minutes.

Q. From when to when?

A. This was from 7:00 to 10:45.

MR. COHEN: Thank you very much. I have no further questions.

CROSS EXAMINATION BY MR. CRIMI:

Q. Well, did you see him at 7:00 o'clock in the morning?

A. Yes, I did.

Q. You did. Is that when you marked "7"?

A. No.

Q. No. When did you put the "7" in there?

A. On Friday.

Q. Oh, I see, on Friday, so all of these inked marks were done on Friday?

A. That's correct.

Q. And it was on Friday that you put on "10:45"?

A. Yes.

Q. I see. How did you arrive at that?

A. Well, in my calendar if a person should leave early I will write down the actual times they worked, a note to myself, and at the end of the day I write in my record the actual hours they worked and then --

Q. And on October 2nd apparently you have got written in ink from 7:00 to 9:30 and then 1:30 and then 1530.

A. 1530.

Q. Did you see him during those different times or you got that from your other records?

A. No. I would know what operators were in the area.

Q. I see. Now, does this "Void" pertain to what?

A. It informed me he is not to get paid for the actual punched hours.

Q. And are you suggesting that somebody punched this card other than he then?

A. Yes.

Q. Some employee?

A. Probably.

Q. Where is that other exhibit?

THE COURT: Mr. Crimi, could you hand to me,

hand that card up to me.

MR. CRIMI Yes.

THE COURT: What are you looking for?

MR. CRIMI: I am looking for his departmental list.

THE COURT: When you say six days or seven days, that would be Saturday and Sunday?

THE WITNESS: That's correct.

THE COURT: Is that right, and on the 5th day of the time punched, looks like 1428. Where does this start, at the bottom?

THE WITNESS: It starts at the bottom.

THE COURT: That is the earliest then at the bottom and it works up?

THE WITNESS: The time he punched in.

THE COURT: And Friday he punched in at 6:58 in the morning?

THE WITNESS: That's right.

THE COURT: You punch out at the noon hour?

THE WITNESS: Out for lunch.

THE COURT: 11:31, punch back in at noon, 12:00?

THE WITNESS: Yes.

THE COURT: And he punched out --

THE WITNESS: 1428.

THE COURT: That would mean --

THE WITNESS: Go home time.

THE COURT: 2:28 p.m.?

THE WITNESS: 2:28 p.m.

THE COURT: 2:28 p.m., all right, and then on this day this is Wednesday, punch in at 6:56 in the morning, and in the same fashion he punched out at noon and at 1538?

THE WITNESS: That is 1530.

THE COURT: 1530. You use the military time. That would be 3:30 p.m. in ordinary conversation, right?

THE WITNESS: That's right.

THE COURT: On the Tuesday, this writing at the bottom, you didn't make the writing?

THE WITNESS: Not the red. The black writing is mine.

THE COURT: The black writing is yours?

THE WITNESS: And the initial?

THE COURT: The initial is yours and it is written over, it says "Void".

THE WITNESS: Right.

THE COURT: We can't read the time he punched in or the time he punched out but we can read the noon hour and the afternoon,

1530, right?

THE WITNESS: Yes.

THE COURT: But you made some conclusion this was void and you gave him --

THE WITNESS: The actual hours.

THE COURT: The actual hours, which was 7:30 to 9:30 in the morning. He punched in. He didn't punch in but you concluded he was back there at 1:30?

THE WITNESS: That's right.

THE COURT: In the same fashion on Monday afternoon, though the actual punch time runs from 6:54 in the morning, and then forgetting the noon hour to, well, 1530 in the afternoon, you at that time came to a certain conclusion that the correct time should be from 7:00 until 10:45?

THE WITNESS: Yes. We have operators who come in early. We don't count that. They don't get any time for that. That is their initiative, but our shift starts at 7:00 o'clock, so if they punch in at 6:30 or 6:31, we still sign them in at 7:00 o'clock.

THE COURT: Mr. Brown, was there a record, - or

how did you conclude, - do you recall how you came to the conclusion that the actual time punched should not be allowed but different times?

THE WITNESS: By the attendance record. At the end of every day I write down the hours the operator actually worked.

THE COURT: Because you are there?

THE WITNESS: I am there ninety-five per cent of the time, if not more.

THE COURT: Go ahead, Mr. Crimi.

BY MR. CRIMI:

Q. Who puts in these red marks, Mr. Wheeler? I see there is 3.7 on the first.

MR. COHEN: I object, your Honor. He has indicated his name is Mr. Brown.

THE COURT: No, this is Mr. Brown.

MR. CRIMI: Did I say what?

THE COURT: Mr. Wheeler.

MR. CRIMI: I am awfully sorry.

THE COURT: Mr. Wheeler was the previous witness.

BY MR. CRIMI:

Q. I saw Mr. Wheeler's name on the paper. I am sorry. Strike that. I apologize. Who puts the 3.7 in red?

A. The bookkeeping department based on the correction that is present on the card.

Q. On this card?

A. That's correct.

Q. So that on the punching in and punching out on the 1st of October, that conclusion is he had worked 3.7 hours?

A. That's correct.

Q. And it is punched in at 6:54 and there is a 1:30 notation. Can you explain?

A. I am sorry. What was your question?

Q. My question is somebody other than you put 3.7 hours as being worked on the 1st, is that correct?

A. That's right.

Q. And you said that they derived the 3.7 hours, but what was punched onto the card?

A. No. See, this is void. That would nullify the entire eight hours. This is void of any time by the writing on the card.

Q. Do you mean by your writing?

A. In this particular case.

Q. They went by your writing, is that correct?

A. That's correct.

Q. Okay. You actually had 3.8.

A. Okay.

Q. The next column they have 4.5 and you have got 4.0.

A. Yes.

Q. Did they go by your writing there too?

A. For this figure, yes.

Q. 4.5, so there is a difference of half an hour apparently from this to that?

A. Yes.

Q. I see. Now, you say these are kept in the area of your department, is that correct?

A. In a general central area for other departments also.

Q. With other departments also. I notice these are all different. Exhibit 17 is a recital of all the operators in your department, is that correct?

A. All the operators that are assigned to me, yes.

Q. All the operators that are assigned to you. Those are the only ones you have a check over, is that right?

A. Sometimes if someone is absent we fill in, but I am really responsible for those people on my roster.

Q. You don't have rosters of any other people?

A. No.

Q. Whatever number of people are here, those are the ones you check?

A. Report directly to me.

MR. CRIMI: Okay. Thank you.

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THE COURT: Mr. Cohen, anything else?

MR. COHEN: No, your Honor. Thank you.

THE COURT: Thank you, Mr. Brown.

MR. COHEN: Thank you, Mr. Brown.

THE COURT: Next witness, please.

MR. COHEN: Your Honor, in light of prior remarks by you in the course of this trial, I would request a side bar conference.

THE COURT: All right.

(Side bar conference had between Court and counsel as follows:

MR. COHEN: Your Honor, in reviewing the case with Agent Devine, I found out yesterday that he was the guy who came in and took Leroy Cephas' photograph.

THE COURT: I can't hear you.

MR. COHEN: He was the guy. He was the agent who on October 1st --

THE COURT: He is what?

MR. COHEN: Agent Devine, who on October 1st came in there at the Lewiston-Queenston Bridge and took a polaroid, - and took

AFFIDAVIT OF SERVICE BY MAIL

State of New York)
County of Genesee) ss.:
City of Batavia)

RE: United States
v
Carol Pryce
Docket No. 75-1016

I, Leslie R. Johnson being duly sworn, say: I am over eighteen years of age and an employee of the Batavia Times Publishing Company, Batavia, New York.

On the 17 day of April, 1975 I mailed 2 copies of a printed Appendix in the above case, in a sealed, postpaid wrapper, to:

Charles F. Crimi, Esq.

Suite 700

One East Main Street

Rochester, New York 14614

at the First Class Post Office in Batavia, New York. The package was mailed Special Delivery at about 4:00 P.M. on said date at the request of:

Kenneth A. Cohen, Assistant U. S. Attorney

U. S. Court House, Buffalo, New York 14202

Leslie R. Johnson

Sworn to before me this

17 day of April, 19 75

A. GERALD KLEPS
NOTARY PUBLIC, State of N. Y., Genesee County
My Commission Expires March 30, 19..